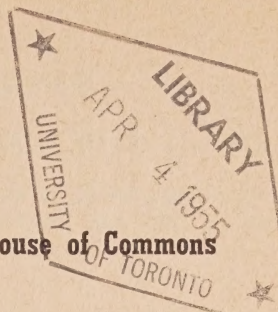


SECOND SESSION—TWENTY-SECOND PARLIAMENT
1955



Joint Committee of the Senate and the House of Commons
ON

CAPITAL AND CORPORAL PUNISHMENT AND LOTTERIES

Joint Chairmen:—The Honourable Senator Salter A. Hayden
and
Mr. Don F. Brown, M.P.

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 9

THURSDAY, MARCH 17, 1955

WITNESSES:

Professor Stuart K. Jaffary, School of Social Work, University of Toronto;
Dr. Nicolaas Pansegrouw, Cassidy Research Visiting Professor at the
School of Social Work of the University of Toronto, from the Union
of South Africa.

Appendix A: Criminal Statistics 1928-52.

Appendix B: Graph depicting "Boys and Girls brought before the Court
and Population of Children 7-15 Years of Age".

Appendix C: Table of "Indictable Offences by Youths 16-19 inclusive
(Males) 1950 and 1952".

Appendix D: "Abstract of Main Arguments" of 1938 Report of U.K.
Departmental (*Cadogan*) Committee on Corporal Punishment.

Appendix E: "Robbery with Violence" extracted from 1938 Report
(Appendix III) of U.K. Departmental (*Cadogan*) Committee
on Corporal Punishment.

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OTTAWA, 1955.

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	Mr. H. E. Winch

A. Small,
Clerk of the Committee.

MINUTES OF PROCEEDINGS

THURSDAY, March 17, 1955.

The Joint Committee of the Senate and the House of Commons on Capital and Corporal Punishment and Lotteries met at 11.00 a.m. Mr. Don. F. Brown, Joint Chairman, presided.

Present:

The Senate: The Honourable Senators Aseltine, Farris, Fergusson, Hodges, McDonald, Tremblay, and Veniot—(7).

The House of Commons: Miss Bennett, Messrs. Boisvert, Brown (*Brantford*), Brown (*Essex West*), Cameron (*High Park*), Fairey, Garson, Johnston (*Bow River*), Leduc (*Verdun*), Lusby, Mitchell (*London*), Montgomery, Murphy (*Westmorland*), Shipley (Mrs.), Valois, and Winch—(16).

In attendance: Professor Stuart K. Jaffary, School of Social Work, University of Toronto; Dr. Nicolaas Pansegrouw, Cassidy Research Visiting Professor, School of Social Work, University of Toronto; Mr. D. G. Blair, Counsel to the Committee.

On motion of the Honourable Senator McDonald, seconded by the Honourable Senator Fergusson, the Honourable Senator Farris was elected to act for the day on behalf of the Joint Chairman representing the Senate due to his unavoidable absence.

Professor Jaffary was called and, on request of the presiding chairman, was introduced by Counsel to the Committee.

Professor Jaffary made an oral presentation on abolition of corporal punishment and was questioned thereon.

During the course of Professor Jaffary's presentation and the ensuing questioning period, the Committee agreed as follows:

1. That the "Criminal Statistics over a span of 25 Years" referred to by Professor Jaffary in his presentation, being Table 1 at page 148-9 of "Statistics of Criminal and Other Offences, 1952" published by the Dominion Bureau of Statistics, be printed as Appendix A to this day's proceedings;
2. That the graph "Boys and Girls brought before the Court and Population of Children 7-15 Years of Age" appearing at page 9 of "Juvenile Delinquents, 1952" published by the Dominion Bureau of Statistics, be printed as Appendix B to this day's proceedings;
3. That 30 copies of the latest Dominion Bureau of Statistics' publications entitled "Statistics of Criminal and Other Offences" and "Juvenile Delinquents" be obtained immediately for the use of the Committee;
4. That the table "Indictable Offences by Youths 16-19 incl. (males) 1950 and 1952" condensed by Professor Jaffary from Tables 5 in the 1950 and 1952 "Statistics of Criminal and Other Offences", be printed as Appendix C to this day's proceedings;

JOINT COMMITTEE

5. That the "Abstract of Main Arguments" of the 1938 Report of the U.K. Departmental (*Cadogan*) Committee on Corporal Punishment, be printed as Appendix D to this day's proceedings; and
6. That an Extract from the 1938 Report of the U.K. Departmental (*Cadogan*) Committee (Appendix III—Robbery with Violence), be printed as Appendix E to this day's proceedings.

At the conclusion of his presentation, Professor Jaffary introduced Dr. Nicolaas Pansegrouw from the Union of South Africa, presently a Cassidy Research Visiting Professor at the School of Social Work of the University of Toronto. On invitation, Dr. Pansegrouw addressed the Committee on corporal punishment and capital punishment in South Africa. The Committee agreed that his statement be included at the end of today's evidence.

The presiding chairman expressed the Committee's appreciation to Professor Jaffary and Dr. Pansegrouw for their presentations.

The witness and Dr. Pansegrouw retired.

At 1.45 p.m., the Committee adjourned to meet again as scheduled.

A. Small,
Clerk of the Committee.

EVIDENCE

MARCH 17, 1955.
11 a.m.

The PRESIDING CHAIRMAN (*Mr. Brown, Essex West*): Would you please come to order. There are some announcements I think I should make at this time. The next meeting of the general committee will be on Tuesday next, March 22nd, when we shall hear General R. B. Gibson, Commissioner of Penitentiaries, on corporal punishment at 11 a.m. The meeting will be in this room. There will also be a meeting of the subcommittee on agenda and procedure in room 258 at 4 p.m. on Monday. That will be on March 21.

Mr. FAIREY: Just the steering committee?

The PRESIDING CHAIRMAN: That is right. Next Monday. Now, I draw to the attention of members of the committee the fact that it is sometimes rather difficult when you ask questions if we do not keep in absolute order. It is rather difficult for the reporter to get down the question asked, so if members of the committee would keep that in mind it would facilitate our work and facilitate the transcription of the evidence which is placed before the committee. There will also be a break this morning about 12 o'clock if the clerk will draw this to my attention, because we are having only one reporter to take down our proceedings. There are a great many other committees in session, and our reporter is going to have quite a job.

Today's witness is Professor Stuart K. Jaffary of the School of Social Work at the University of Toronto. He is going to make a presentation on corporal punishment. If it is your pleasure, I will now call upon Professor Jaffary.

Hon. Mr. McDONALD: I have pleasure in suggesting that Senator Farris be co-chairman.

The PRESIDING CHAIRMAN: I am sorry. I overlooked that matter. There was, of course, no discourtesy meant on my part.

Those in favour? To the contrary?

Carried.

The PRESIDING CHAIRMAN: Senator Farris will you please come forward. Perhaps before we hear the evidence of Professor Jaffary, Mr. Blair will have a word to say as to his background.

Mr. BLAIR: Mr. Chairman, Professor Jaffary is a graduate of the University of Alberta—another westerner who has come to live in Ontario. He did post-graduate work in the University of Alberta. He wrote a thesis in 1928 entitled "Vagrancy in Alberta". After graduation he was associated with mental institutions in Alberta as a social worker, and during this time he served as secretary to the Board of Visitors to provincial prisons. Later he took post-graduate work at the University of Chicago and subsequently became professor of social work at Tulane University in New Orleans. Since 1940 he has been a professor at the School of Social Work, Toronto University. From 1948 to the present time he has served as instructor in the Penitentiary Staff College and for the years 1948 to 1952 he was an instructor in the staff college operated by the Ontario Department of Reform Institutions. He is a past president of the Canadian Penal Association, and throughout his whole teaching career he has evidenced a great interest in problems of crimes and delinquency and penal reform.

Professor Stuart K. Jaffary, of the School of Social Work, University of Toronto, called:

The WITNESS: Mr. Chairman, ladies and gentlemen, may I say that I deem it a great honour to be called before this committee. I have appeared before an occasional parliamentary committee on other occasions, and I say quite honestly that I have a great appreciation for the responsibilities of a member of parliament. Canada is not an easy country to govern, and you have that responsibility in the first instance. And when it comes to committee work, I know how important committee work is in assembling and sifting the evidence, and finally recommending whatever conclusions may be reached to parliament for action. Thus I shall be very happy to help in any way I can, and I do deem it an honour to be asked to help.

The outline of my argument this morning perhaps will not take more than 30 or 40 minutes to complete. The sequence will run this way: I am going to take a look at the figures of crime in Canada with the object of pointing out that crime is not nearly as serious a matter in Canada as it is sometimes represented. It is not a matter for alarm. It is under control, and in fact serious crime is decreasing. That decrease may or may not be related to corporal punishment, but it is important in its own right. Second, that when you turn to the institutions, the penal institutions, the use of corporal punishment is decreasing. It has even been abandoned in some of them, and it may not be as essential to control in these institutions as we have previously thought. Then I will take a brief look at other countries, especially referring to the Cadogan report in Great Britain. As members of the committee know, Canada is one of only four jurisdictions in the world which has continued to use corporal punishment. My closing point is that I think we should abolish it.

On the first point, that serious crime is decreasing in Canada, I will start by saying this: I come from Toronto where we have two evening newspapers called the *Star* and the *Telegram*. If you want an evening newspaper you have to read one of them, unfortunately. I do not know whether there is a *Star* man here or not. However, from either one of them, you might get the impression that we are about to be overwhelmed by a crime wave any day. If two crimes occur on successive days, that constitutes a crime wave. Our newspapers, some of them, want to sell papers and make money. They do that by the use of headlines, and often the public gets a misleading idea of the crime situation if we draw our impressions from newspapers. I say that more or less in passing, but our ideas are to some extent formed by such sources. Another influence of which I think we should be aware, is the influence of the United States. The United States at this moment is very seriously disturbed about high rates of delinquency and increasing crime. A Canadian might naturally assume that if the situation was bad in the United States it was probably equally bad in Canada, and make up his mind unthinkingly that this was so. I do request that members of the committee will not make such an assumption. I am going to present some figures here which I think will be both valuable and interesting on the crime situation in Canada to show that it is very much less serious than in the United States. It is nothing to be alarmed about at all. You also have events such as the Kefauver investigation in the U.S.A. and so on which spread over into Canada and created a minor furore here, but I am just asking that we should be honest and face the Canadian situation in a Canadian way. Even American visitors who come over here sometimes fail to do us the courtesy of finding out what the facts are in Canada before they assume that conditions in Toronto are identical with conditions in New York. They are not!

Now if you will turn your attention to the sheet (*See Appendix A*) which is before you, ladies and gentlemen, I should like to make first of all a cor-

rection in the title. When I took it out of my bag this morning and looked at it I found a mistake had been made; I failed to check it with my typist last night. The heading reads now: "Criminal Offences over 25 Years". What was intended there was a review of the past 25 years of criminal statistics. If you will insert after the word "over" the words "a span of" the meaning will be made clear. At present it looks as if the statistics relate to the age of 25 and over, which they do not; it covers all ages of adult offenders. This table is taken directly from the Dominion Bureau of Statistics publication, "Statistics of Criminal and Other Offences, 1952", page 148. Incidentally, this publication contains a gold mine of information. May I compliment you, Mr. Minister, on the excellent work on crime statistics which the D.B.S. is doing. Part of it, I think, is the result of the conference which you held a number of years ago.

The PRESIDING CHAIRMAN: Would you speak a little louder, please.

The WITNESS: I am saying we have excellent criminal statistics in Canada and I only wish more people would read them seriously. In part they were the result of a conference which Mr. Garson called on criminal statistics and their improvement about six years ago.

This table presents the number of convictions for all offences in Canada in the last 25 years. On the right side of the sheet is a table relating to total convictions, divided into three columns. These three columns present the total number of convictions, a column of percentage, listed uniformly at 100 which is the basis for the percentage breakdown of indictable, non-indictable and juvenile convictions to be found in the other columns. On the extreme right is a column which presents the ratio of convictions per 100,000 of the population. If members of the committee will look at that table, in particular at the number of convictions and at the ratio per 100,000 population, you will see that the rate is rising, and if you will look at those totals, running into millions, down at the bottom of the third column from the right, you would be sure that we were going to be engulfed by a crime wave. But that is not so, because most of that recent increase is actually made up of small offences such as violations of municipal traffic regulations. The column on the extreme left has been quoted, I think, in your minutes of evidence, as evidence that serious crime is increasing in Canada. I think for example that Mr. Kirkpatrick of the John Howard Society, made that statement in his brief. I have a great respect for that brief and I would associate myself with it, with this exception, that I do not agree on its interpretation of that statistic, and for the following reasons: I think a much truer indication of serious crime in Canada is the number of indictable offences. They are the serious offences—roughly those in which the accused is entitled to trial by jury and they to my thinking are the true measure of the number of serious offences in Canada. They are down here on the left-hand column—indictable offences from 1928, 25 years ago. You can see what is happening to them. They climb fairly steadily until the depression years, and the early war years when we are at a high point, some 48,000 in 1949 and 46,000 two years later; 46,000 in the immediate year after the war, but the figure has been dropping steadily since that time. And while the figures are close, it is possible to say that in the last two years we have had fewer serious offence than in any year in the previous eight years, and, if you disregard the year 1942, of any time in the previous 12 years. I think that is a reassuring state or condition rather than an alarming one. And members of the committee will find, on looking at the next column, the percentage of indictable offences of all offences, that indictable offences have declined relatively, not because of a decline in absolute numbers, but because of the tremendous increase in non-indictable offences in relation to it. But it remains that indictable offences are only 2.6 per cent of all offences in Canada. I might have said earlier, Mr. Chairman, that these statistics are in terms of offences. The number of

offenders as persons is some 10,000 less than these figures. In other words, there are many cases, as members of the committee know, where one offender may be charged and convicted of several offences. To avoid that duplication the Dominion Bureau of Statistics does include in its material the number of the offenders in certain tables, and the number of offenders here is somewhere about 30,000—about 10,000 less than the number of offences. This again is an even smaller figure if you are thinking in terms of percentages.

Taking the third column here, the figure per one hundred thousand population, members of the committee will find that this also is revealing. Canada is growing, and growing fairly rapidly in population. Column 1 presents the absolute numbers of offences. If you want to know how we are doing relative to our population you will have to take the actual figure and compare it with the population statistics, and the Bureau of Statistics has done that. This is really an index number per 100,000 of the population, and that figure did rise parallel to the other to a high point in 1939 and 1940, from which point however, it proceeds to fall off pretty steadily through the war years and the post-war years down to the present time. And the two last years, 1951 and 1952 are the lowest years in this index since the 1920's. In other words, generally speaking, the relative amount of serious crime in Canada is lower now than it has been at any time in the past 20 years. That to me is a reassuring statement, rather than an alarming one.

Turning now to the non-indictable offences, if you will take the middle column you will see this sudden growth of non-indictable offences, with a sharp increase in recent years. These figures are not analyzed here, but they are analyzed by the Bureau of Statistics and the source of the increase is almost wholly due to convictions for traffic offences. I am quoting now from a table on page 156 of criminal statistics for 1952, table 13. If you look at the offences classified by type of offence, you will see that traffic violations which stood at 141,000 in 1928 have risen to almost 10 times that number—1,293,000 as of 1952. In other words traffic offences have increased by nearly 10 times in the course of 25 years, and very rapidly in the last 10 years. These days it is the great number of traffic regulations, parking tickets in cities for the most part, which disturb these crime figures. I do not think anyone would call the violation of a parking regulation a serious crime—if so, the committee is hearing evidence from a very grave offender because I have had three traffic tickets in the last... I won't say how long! Toronto has a parking problem which members of the committee would realize if they ever had to drive in that city.

May I now point out another fact which I think is significant here. The ratio for the 100,000 population which, as I say, is a more accurate one, because it gives the crime figures in proportion to the population, shows that in the last 25 years from 1928 serious crime has decreased. During this period we have had 10 years of serious depression in this country, followed by World War II for six years. The war took every bit of energy this country could summon for its prosecution and as members of the committee well know, it brought tremendous economic and social changes in Canada, pulling families apart, moving people around the country and leading to the development of "boom cities".—But despite all that the country weathered it all remarkably in terms of crime and social disturbance, and the crime index, if you like to call it so, went down. I think that is a great tribute to the stability of this country, not one which is not to be gloated over, but publicly recognized, and I think it shows that crime, in its more serious aspects, is certainly not giving cause for undue alarm.

So much for this general review of the crime situation, Mr. Chairman. I should also like to go out on a little limb here with your indulgence. I am not a prophet, nor the son of a prophet, but I would like to put on the record

that I think the outlook for the years ahead is for a further decrease in crime, and I will give the committee my evidence for that opinion. The first piece of evidence, or one piece of evidence, is the decline which members of the committee see here occurring in the adult age group. The second piece of evidence comes from what is happening in juvenile delinquency. I do not know, Mr. Chairman, whether your committee has this volume on juvenile delinquency or not. It is a companion volume to the statistics on adult delinquency and it is called "Juvenile Delinquency". Some of the committee may know it. There is a chart here—the secretary of the committee may get it for the information of members later on—(See Appendix B) and perhaps they may be able to get some impression of it now.

The PRESIDING CHAIRMAN: Would you please stand up and show it to the committee?

The WITNESS: Yes, I will hold it up. It is a chart showing the amount of juvenile delinquency in Canada in terms of children brought before the juvenile court and "convicted" if you like to use that word—children found in a state of delinquency in the juvenile courts from 1943 to 1952. The trend, as members of the committee can see from the graph, is downward. The high point was reached in 1943, dramatically, because of the war; it had been somewhat lower before that. Since 1943, even during the war years, both the actual amount and the rate has fallen and it has stabilized at somewhere around 60 per cent of the high point figure. That amounts to some 800 or 900 children before the courts because of serious offences in a given year perhaps it would be closer to 1,000, if I can speak from memory. That is an absolute number of children. I think members of the committee will agree that this is fairly reassuring. Meanwhile, our population has been growing steadily, and if the ratio is taken, the result is even more reassuring.

Mr. BLAIR: Can you tell us what page you are quoting from?

The WITNESS: Page 9 of the volume Juvenile Delinquency for 1952.

Mr. WINCH: May I ask that that be included as an appendix to the report?

The PRESIDING CHAIRMAN: I have a suggestion that we obtain a copy of 1952 criminal statistics for each member, as well as a copy of the report on Juvenile Delinquency which is now presented. If it is the pleasure of the committee, we shall entertain a motion to obtain these for each member of the committee. Are we agreed?

Agreed.

The PRESIDING CHAIRMAN: Probably we should have this chart which is now being referred to by Professor Jaffary made a part of the record of this meeting. Is that agreed?

Agreed. (See appendix B)

The WITNESS: Mr. Chairman, I have not been successful in finding another figure which I wanted, but it is contained here, and that is the ratio between the absolute number of children who appear in court against the number of children in that particular age group. This would show a decline of some 50 per cent when you put it in proportion to the total number of children. The decline is something of that order. In other words there are only one-half as many children in Canada coming before the courts in recent years as there were at the wartime peak. I am referring to children under 16.

Moving up into the next age group, 16 to 21, or 16 to 20, the decrease is not so easy to get at. Unfortunately, the Dominion Bureau of Statistics does not isolate the figure. You can get some of them and in the rather brief time I had I did put some of them together, and I would like to present

those figures to you. This is now evidence with regard to the next age group, the age group 16-20—roughly the youth group—and the figures there go as follows—they are taken from the 1950 and 1952 statistics of criminal offences.

The PRESIDING CHAIRMAN: Can you refer us to the page so that we may have this incorporated into the record of the meeting?

The WITNESS: I can. The page on indictable offence is page 48 of the 1950 volume and page 44 of the 1952 volume.

The PRESIDING CHAIRMAN: That is, from "Juvenile Delinquency"?

The WITNESS: No. I am sorry, Mr. Chairman, I am back to the youth group.

The PRESIDING CHAIRMAN: That is from the Bureau of Statistics?

The WITNESS: That is right "Statistics of criminal and other offences", 1950 and 1952. Anyone over 16 is included in the adult statistics. From that table, taking the years 1950 and 1952 for males under 20, by class of crime, you get these figures: first of all, offences against the person, a large group of offences which members of the committee are much concerned—youths under 20, in 1950, 575; in 1952, 456, a reduction of 119.

Mr. WINCH: May I ask a question? Does this relate to all ages from 21 down, or does it refer only to the years from 21 down to 16?

The WITNESS: I am speaking of the years between 16 to 19 inclusive.

The PRESIDING CHAIRMAN: Are you reading verbatim from the report, or is this something which you have taken out of the report?

The WITNESS: It is my own, primarily.

The PRESIDING CHAIRMAN: Would you let us have a summary?

The WITNESS: Yes, I will do that.

The PRESIDING CHAIRMAN: Fine. That will be included in the report of this meeting. (See appendix C)

The WITNESS: The next class consists of offences against property with violence—armed hold-ups and so on. In 1950 there were 1,591; in 1952 there were 1,410, a reduction of about 180 in a two-year period on a basis of 1,600 base figure. The third class is offences against property without violence, theft and so on—2,785 in 1951 and 2,576 in 1952, a reduction of 200 in the two-year period. All other offences—for those two years total 487 and 436 respectively, a small reduction.

Summing all this up, with regard to this group aged from 16 to 20, we have a total of 5,664 offences in 1950 and 5,096 in 1952, a reduction of something less than 500—480 or something of that sort. I submit that evidence, gentlemen, to show that in recent years there has been a reduction in the total number of offences in the youth group from 16 to 20, that reductions have taken place in all classes of crime, and some of them have been of quite considerable proportion. I do not want to exaggerate that. I think if we had a bad year, the figures may jump up a bit, but undoubtedly the trend is downward in that youth group. Those two bits of evidence—what is happening to the juveniles and what is happening to the youth group—make the limb that I want to go out on—to say we can reasonably expect a reduction in total crime as those age groups move on into adult years, because as all members of the committee know, most adult offenders have a background of juvenile offences before becoming adult offenders.

Mr. WINCH: Would you mind repeating that last statement?

The WITNESS: I said the evidence shows that most adult offenders have a background of offences as a juvenile before they commit their adult offences. If you want me to substantiate that I will, but I assumed it was an acceptable statement.

To sum up these two points: In my opinion crime is clearly under control. It is always an important matter, but it is not an alarming matter. The outlook is favourable, even hopeful, and I would ascribe that to a number of conditions, but in talking of our treatment of crime I think the largest factor is that we are using our heads. For a long time in Canada we did not use our heads too much, and members of the committee know the history of the penitentiary riots in the 1930's, of the Archambault Commission, and the excellent recommendations it made, and the implementation of those recommendations under the present government—a considerable part of them under the present minister. We are making progress under the new Criminal Code in the increased use of probation and so on, and now we are considering the revision of parole regulations. We are using our heads about the offender—and I think some of these results—not all of them by any means—are due to this increased interest in penology and the devotion of more attention to it.

My second point, Mr. Chairman, is that this decreasing rate of crime to which I have called the committee's attention, has occurred along with the decreasing use of corporal punishment. In the evidence of the committee, you already have statistics of the incidence of the sentence of corporal punishment imposed by the courts. I think that is on page 795 of the evidence, table 2. The number of convictions with extra sentences of corporal punishment as reported by the courts in 1930 was 52. From the table you will see that the sentences of corporal punishment have decreased in number from about 165, the high point in 1931, to 116 in 1932 and 118 in 1933—a decrease which is not always a steady one, but one which continues down to about 35 sentences in the last several years—in other words less than one-third of the rate 20 years ago.

There has been, then, an actual decrease in the imposition of corporal punishment by the courts. At the same time, there has been a decrease in crime. To me that is evidence that corporal punishment is not a particular deterrent. If we had been increasing the number of sentences of corporal punishment, and crime was decreasing, it would be possible to claim that it was, but the two both go down together—less corporal punishment and less crime. I can see no relationship between them. In fact it may be the other way round. However, I am not arguing that if we were to abolish corporal punishment, we would abolish crime; that would be foolish; actually I do not think there is much connection between the two. The point is that crime is decreasing, almost irrespective of what we do about corporal punishment, in my opinion. There are reasons for that decrease, and I think you have had some of them; Mr. Common pointed out several of them to you. If there is any suggestion of mental instability the court is loathe to impose corporal punishment; where the offender is a "repeater" and is liable to a long sentence, the court is loathe to add corporal punishment to his sentence. In addition there is inequity of use of corporal punishment as between one judge and another. Some judges do not like to use corporal punishment, and others will use it, with the result that persons committing the same offences are receiving different treatment, which is not a good thing under the law. In addition I understand there are classes of offences which are to be dropped under the new Code and this will further decrease the use of corporal punishment.

Well, the summary of my argument is that we are doing very well without corporal punishment, that its influence is very uncertain, if any, that we are going to decrease its use still further, and, if that is so, is not this the point at which we should abolish it? My own opinion is that it is. That is with relation to court sentences.

When you turn to institutions you will recollect that the committee has heard a considerable amount of evidence about its use in such circumstances. The strap for control purposes is being used less and less. The committee's

evidence contains a table from General Gibson—page 792—which shows that the number of sentences for prison offences from 1932 onwards has ranged from 47 in 1932—there was a high point of 55 in 1934-1935—I presume that was the time of the penitentiary riots, or some of them—falls off, rises to another high point in 1944 and 1945 of 67 and 65, and has decreased since that time to a very low point in 1950-51 and 1951-52 of only 8 and 7 cases in all eight penitentiaries in Canada.

I think the committee has also had evidence from Warden Allan of Kingston Penitentiary that its use in that institution has decreased almost to a vanishing point, and that there was one recent year in which there was no corporal punishment at all, and another year in which there were 2 cases, another two years in which there was only one case in each year. The committee has heard a variety of evidence from provincial institutions. As I read it, one province has abolished corporal punishment in its institutions altogether, that is Saskatchewan, and one is working that way, that is to say British Columbia, which will eventually abolish it. Ontario is still using it, but I do not know whether the committee has any figures as to the amount of use they are making of it.

The PRESIDING CHAIRMAN: I think for the purpose of record, I should say that Newfoundland is not using it either.

The WITNESS: I did not know that, but it supports my case. I suggest, Mr. Chairman, that if two provinces have eliminated it, and another is about to do so, this shows that the provincial jails can get along without it, or nearly so. It does appear that the institutions do not need to use it as much as previously and that its use can be equally limited there. That is my view on this subject, and I think the evidence supports it. I would like to make another point in connection with the institutions. The use of corporal punishment in institutions, Mr. Chairman, is obviously for the purpose of control. It is the warden's job to control that institution and the men in it. What happens to the man in terms of his personal reactions, whether he is embittered or not, is of relatively little concern to the warden at that time. His object is to obtain conformity from that man and reduce the threat from disturbances within his institution. In other words the warden is not looking to the community, he is looking to the need for control in his own institution. Therefore I submit he is less concerned about what he may do to the man, other than producing conformity at the moment, than possibly he should be about the effect which corporal punishment may produce on the man when he gets out of the institution and back into the community. He will not be concerned primarily with what that man's attitudes will be towards the police or any other authority when the institutional authority has treated him in that way. I just submit this for the consideration of the committee, namely that the warden's point of view is not necessarily a social point of view. It is an administrative point of view for the solution of an immediate problem, his problem of control.

My third point, Mr. Chairman, is from the outside. So far, we have been looking at the Canadian evidence. The committee has heard evidence from other countries, or it has been made available to them. I think it was Mr. Fornataro who was speaking about the use of corporal punishment in other countries, and the only countries he could find where corporal punishment was still in use were Egypt, South Africa, and the state of Delaware, out of all the 48 states of the United States, and Canada. I have tried to confirm this, but figures are very hard to get. I looked up a big United Nations document but I could not find any reference at all to corporal punishment, which I took as an intimation of how little it is used anywhere else. There was not even an article about it. I also asked a gentleman by the name of Dr. Pansegrouw, who

is a penologist and who comes from South Africa and who happens to be attached to our school staff at the moment, and who has done some work for the United Nations, and speaking from memory he could not add any other jurisdictions to that short list. I think, therefore, that it is reasonably accurate. In any event the number of countries using corporal punishment is very small indeed—I should say the number of jurisdictions using it, because Delaware is one very small state of the United States. But by and large the best information is certainly the English material based on the Cadogan Report. I think you have that report, Mr. Chairman. It is well worth studying. There is a little brochure which I have, probably published by the Howard League, which might be very useful. I expect it is out of print now, but it only consists of eight pages, and it might be worth reproducing.

The PRESIDING CHAIRMAN: Will you lend us that brochure?

The WITNESS: I would be glad to do so if your secretary does not already have it.

Mr. WINCH: May it be included in the appendix?

The PRESIDING CHAIRMAN: Would the committee like to have it as an appendix to the evidence for today?

Agreed. (See Appendix D).

The WITNESS: I think the committee will be particularly interested in this report because it is an inquiry by your opposite number in England for very much the same purpose. Those members of the committee who are familiar with the British course of action in revising their Criminal Code, know that they started in the 1930's and that they set up a departmental committee on corporal punishment, presided over by the Hon. Edward Cadogan. It reported to the British parliament in 1938. May I just read a few sentences at points, which, I think, highlight the proceedings.

The members of the committee were selected as all having an open mind on the subject. None had been connected previously in any way with the movement for the abolition of corporal punishment, yet they finally reached the unanimous conclusion that corporal punishment was of no special advantage as a deterrent, and should be abolished.

There follows a careful inquiry into their statistics and research and so on, both on individuals who had received corporal punishment and on what happened to them afterwards, and they found that people who had been previously flogged became offenders more often than those with a similar record of crime who had not been flogged. That data is all set out here in detail. A further conclusion, and I quote from page 5 of this brochure, was this:

After examining all available evidence, we have been unable to find any body of facts or figures showing that the introduction of a power of flogging has produced a decrease in the number of offences for which it may be imposed, or that the offences for which flogging may be ordered have tended to increase when little use was made of the power to order flogging or to decrease when the power was exercised more frequently.

In other words, no connection was established between the use of flogging and its influence as a deterrent. That is from the report itself. To me, that is both a very careful inquiry and a very significant piece of evidence, and no doubt the committee will give it careful attention. I think Dr. Sellin, when he was here, gave you the details with regard to the state of Delaware which, as I read the evidence, is a very similar case.

Now Mr. Chairman, ladies and gentlemen, you have listened very patiently to this presentation. May I finally summarize it in this way: Canada is making substantial progress in the control of delinquency and crime, and I have indicated the figures which support that view. We are moving forward and we have moved forward remarkably in the last 10 years, particularly since the establishment of the present penitentiary commission in the dominion Department of Justice. Some members of the committee will recall that Saskatchewan had a royal commission in 1946, British Columbia had one later, and Ontario had a select committee last year. We are doing much more inquiry into this field of delinquency and crime than we did formerly, and we are devising much more effective measures against it and I think the "pay off" is apparent at last in the figures which are now before the committee. It is an intelligent program, and it is working. That is point one.

Point two is that as a Canadian I am proud of the Canadian people. I am proud to be a Canadian, and I love the Canadian people as you do. By and large I think the average Canadian is a hard-working and a law-abiding, socially responsible person. If you deal with him in a decent way he respects that treatment. He has a well developed sense of fair play. The ordinary Canadian citizen certainly respects the law. But I am very dubious whether he has much use for the beating of human beings. In my opinion beatings do nothing to add to the dignity of the law. They add nothing to the dignity of the man who receives a beating, nor to that of the agent of the law who gives it. That agent of the law is acting on our behalf. He is acting on your behalf and on mine. We all have to share that beating and I am not sure that we or the Canadian people have any relish for being on the handle of that strap in beating fellow Canadians. So, from my point of view, my head will be higher, ladies and gentlemen, when we abolish legal beatings of our fellow Canadians. Thank you.

THE PRESIDING CHAIRMAN: Thank you very much Professor Jaffary. Now we shall allow a few minutes for the committee to get their battle array in order.

MR. WINCH: May I suggest a break of perhaps 10 minutes so that the reporter may have a rest?

THE PRESIDING CHAIRMAN: That is what I had in mind.

(Upon resuming):

THE PRESIDING CHAIRMAN: We shall come to order. Our questions will start the other way round today, counter-clockwise. Senator Farris, will you lead off?

By Hon. Mr. Farris:

Q. You mentioned the fact that along with the decrease in offences was a decrease in the use of corporal punishment. Have you checked as to whether there was a decrease or an increase of the severity of the other form of punishment, because in general a term of imprisonment is imposed in these cases in addition to corporal punishment, so in order to make a realistic appraisal of these figures have you not also to obtain some information about the relative severity of the different punishments?—A. I am not clear that I understand your point. Is it that even though corporal punishment was not ordered, long prison terms were ordered?

Q. Supposing a person got 20 lashes and six months. The next fellow got no lashes and two years. In order to find the effect of punishment in relation to the figures of offences you have got to obtain information about the severity of the total punishment and any part of it, is that not right?—A. It would be relevant. I have not got those figures. I do not know whether the courts are tending to impose longer sentences or not.

Q. Another point you mentioned was that one judge might order corporal punishment where another would not, which amounts to injustice. I think that is right, but does not the same tendency exist with regard to other forms of punishment? Some judges will award a longer jail sentence than others.—A. Yes, that is true. It is true with regard to various parts of the country too.

Q. Generally speaking, what would you say was the type of crime or offence for which corporal punishment has been awarded?—A. You mean sentences by the courts?

Q. They are offences that are somewhat in defiance of decency?—A. It is all set out in the committee's evidence. You have considered it, I am sure. There are two classes of offences—offences against the person and armed robbery.

Q. That is what I had in mind. Should there not be some consideration given not merely to whether we are going to reform the people who commit such crimes, but also to the contention that men who do this sort of thing should receive something in the way of punishment for what they have done?—A. In other words the establishment, if you like, of the rule of law. It is retaliation, I would say.

The PRESIDING CHAIRMAN: I use the word "revenge".

By Hon. Mr. Farris:

Q. I am asking this witness if he does not think there is some factor of that kind which should be kept in mind. I would say "yes".—A. In answering your question, Mr. Senator, I do think the law has an important function to serve in upholding the rule of law, the agreement of citizens in support of the law, and in consequence the need to make it very clear that the community repudiates this act which the individual has done. How that repudiation is to be expressed is, I think, the critical point. The mere act of imprisoning expresses it usually. In other cases the judge on the bench will make quite a speech expressing moral indignation. That is an expression of repudiation. I think that is a desirable thing and I wish more citizens would attend the courts to share that repudiation which happens to be expressed by the court. One should distinguish that, however, from what you do to an individual because you are "mad" at him. For example, it may be you are "mad" at him because he has held up some poor little grocer and slugged him over the head in a most brutal fashion, and one judge may tend to impose the lash. Part of that is "getting even" for this brutal offence.

Q. Is there a difference between "getting even" and punishment as punishment?—A. Does not the intensity of the punishment express your degree of revenge? I think there is a connection there, though I am not too clear what it is.

By Hon. Mr. Garson:

Q. May I devise a theory as to the basis for this corporal punishment? In those very exceptional cases in which judges now impose it and they are all confined to cases in which the convict himself has been guilty of physical brutality, has it not been based, not upon revenge or the theory of "an eye for an eye and a tooth for a tooth", but upon the supposition, which perhaps may be wrong, that a man who is physically brutal fears the imposition upon himself of that which he visits upon others and therefore for whatever it might be worth as such, corporal punishment is a deterrent?—A. If that were so, would you not expect to find that its imposition upon such people would reduce their subsequent offences?

Q. Yes, I think that is right.—A. The Cadogan evidence did not find that that was so. The Cadogan evidence shows that of those men who had previously been flogged in England for offences with violence, other than robbery, 55 per cent were again convicted of subsequent violent crime.

Q. Of the same character?—A. Not necessarily subsequent violent crimes.

Q. Is there any evidence in the Cadogan or other reports to indicate whether they were deterred from committing crime of the same nature?—

A. Only in terms of subsequent serious crime, subsequent serious offences of violence, and I presume they would not have had the lash in the first place unless they had committed a crime of violence. I should think you would get the answer to that question in the Cadogan report.

By Mr. Cameron (High Park):

Q. Perhaps the professor might care to comment on the subject of capital punishment while he is here?—A. I think I would not, sir, if you do not mind. I am not prepared. Even in the case of corporal punishment, the information took a considerable amount of finding. Capital punishment is more involved and I understand you have a considerable amount of evidence before you now on that question.

Q. You say the use of corporal punishment is decreasing in Canada?—

A. I read the figures earlier. They are in the evidence. Its present use is about one-third of the amount of use we gave it in the highest period of use some 20 years ago.

Q. Would that indicate to you that there is less inclination in the courts now to apply it, or that there has been a lessening in the number of cases to which it might possibly be applied?—A. I think the table which I quoted shows that clearly. It is in your evidence at page 795. If you look down this table you will find the classes of crimes to which it can be applied and the number of times it has been applied under each of those sections of the Code. I think without exception they all show a decrease.

Q. Are there any cases in which it might have been applied with justification and beneficial results, in your opinion?—A. Do you mean any acts of crime?

Q. Justification as an adequate punishment of the crime, and beneficial to the prisoner in the effect it had upon him?—A. Do you mean, sir, whether there are other classes of crime or other individual cases?

Q. No. Just this. An offense has been committed. Has there been any case with regard to which you feel that the infliction of corporal punishment on the accused, having regard to the offense, was justified and where, that punishment having been applied, it was beneficial?—A. That is a difficult question to answer. In the first place, under the law, there are many circumstances in which you cannot apply corporal punishment no matter how much you may wish to. If the law did allow you to apply it, I would say, categorically "No" to that, because I personally do not believe in corporal punishment nor in its efficacy.

Q. You think it has no beneficial effect whatsoever?—A. If it has they are so very small that I think they are far outweighed by the disadvantages.

Hon. Mr. GARSON: I was handing to the witness a report of the United Kingdom departmental committee on corporal punishment. The Cadogan report at page 138, table 5 shows the subsequent record of prisoners upon whom corporal punishment had been inflicted. This is the very point under discussion and I was just asking the witness if he would interpret this for us. From these statistics it looks to me in some degree that the age of the prisoner has some effect on whether corporal punishment produces any result or otherwise.

Mr. BLAIR: While the witness is looking at the table perhaps we can agree to include it in the report at this stage together with any other tables which are referred to in the discussion.

The PRESIDING CHAIRMAN: We will have not only this, but any other records which are referred to in the evidence or in the course of the replies to the questions incorporated in the committee's proceedings.

Are we agreed?

Agreed.

(See Appendix E)

The WITNESS: Mr. Chairman, I have just been glancing at this, I have not had much time to appraise it. The Cadogan committee, in this table, divided their offenders by age groups—under 21, between 21 and 30, between 30 and 40, and 40 and over. Then they investigated subsequent convictions.

The PRESIDING CHAIRMAN: Has that table got a number?

The WITNESS: It is table 5 on page 138. It is headed "Subsequent record related to age groups". Subsequent convictions were registered in a degree which varied apparently with the age of the individual. No convictions were registered in the case of 64 persons—using round numbers—all those under 21 who had had corporal punishment. 34 per cent of those in the twenties, 23 per cent of those in the thirties, 33 per cent of those who were 40 or over were subsequently convicted. In other words the number or the proportion of cases in which subsequent offences were not registered was larger in the younger age groups. Those were in cases in which corporal punishment was given. Of those who were not sentenced to corporal punishment there were no subsequent offences in 58 per cent of those under 21, as against 64 per cent who had been punished corporally. There is a difference of 6 per cent. The other age groups show something of the same relationship.

Hon. Mr. GARSON: I think we had better put the tables on the record and let them speak for themselves. I doubted whether they supported the witness's imposed for disciplinary purposes in institutions?—A. No. I think the sentences would be imposed by the court only.

Mr. BLAIR: Mr. Chairman the tables which are being referred to is part of appendix III to the report of the Cadogan Committee and this appendix, as I remember it, consists of about eight pages more or less, and the general purpose of the appendix is to deal with statistics on the after-conduct of people who have had corporal punishment. I wonder if it would not be advisable to put the whole of appendix III in?

The PRESIDING CHAIRMAN: Are we agreed?

The WITNESS: I think it is highly relevant evidence.

The PRESIDING CHAIRMAN: Are we agreed?

Agreed.

(See Appendix E)

Hon. Mr. HARRIS: There was one answer which you gave to Mr. Cameron which I think might be elaborated a little. I understood the professor to say he thought the few cases in which a beneficial result occurred did not justify the retention of corporal punishment because of the greater number of cases in which harm was done. I have not heard any indication here that corporal punishment has done harm, that is, from this witness.

The PRESIDING CHAIRMAN: Would you care to comment on that, Mr. Jaffary?

The WITNESS: I did not produce evidence as to the effect of corporal punishment on the individual. The committee has had several statements about that, and I have nothing new to add to that subject.

Perhaps I might sum it up this way: the evidence is inconclusive and depends very much on the kind of persons you are dealing with. Some men will brush it off very lightly, but with others it might make a strong impression indeed. What the probable result will be in the way of reacting is highly uncertain. There is no uniform result.

The PRESIDING CHAIRMAN: You have made no personal investigation of individual cases?

The WITNESS: I think that is the only kind of evidence which would satisfy that question.

Mr. WINCH: Good for you!

The PRESIDING CHAIRMAN: Are there any further questions?

Hon. Mr. FARRIS: I think that indicates that this witness is not asserting there is much probability of harm done.

By Mr. Cameron (High Park):

Q. I want to ask if the witness has had any personal experience with persons upon whom corporal punishment has been administered, whether it is good or bad, or are you really relying entirely upon some form of statistics upon which to ground your opinion?—A. I have relied on statistics, and upon the general effects which they show. In the course of my work I have had contact with several hundred offenders at various places, institutions, and so on. I have never talked to them specifically with the effect of corporal punishment in mind, though.

By Miss Bennett:

Q. In connection with corporal punishment as imposed within institutions to maintain control and authority, have you made any examination, and have you any views as to how far it does go, or if it is effective in maintaining control and authority and a proper outlook of discipline within the institutions?—A. No, madam, I have not had occasion to do that. You have had evidence from institutional people directly on that point, which would be much better than my own. I could not answer that.

Q. I have two questions to ask. Could the professor tell us whether, as a result of the Cadogan report, corporal punishment was abolished in England?—A. It was.

Q. Has it been reintroduced?—A. The Cadogan report recommended its abolition on or about 1938. The modification of the Criminal Justice Act in England was delayed because of the war. It was picked up after the war, as you know, with dramatic political experience of a threatened split of the Labour party over capital punishment, after which capital punishment was taken out of the issue and referred to a royal commission, I think, whose report you undoubtedly have; and the rest of the Act was passed.

Taking the Criminal Justice Act of 1948 of Great Britain, that Act accepted the recommendation of the committee on corporal punishment and it was abolished in England as of that time.

Q. And it has not been reintroduced?—A. It has not been reintroduced. I think you have it in evidence that there was some agitation in England for its re-introduction; but that agitation has not been very effective, at least there has been no—I may be wrong in this and if so the secretary can correct me—but I do not think that it has even gone so far as to result in a question during the question period in the British House of Commons.

Q. My second question is this: you have made it apparent that you are absolutely against corporal punishment. But suppose there was a particularly revolting case. Would you advocate a longer prison sentence?—A. That is a very difficult question. As you know, the purpose of criminal law is the protection of society.

Q. Granted.—A. You are debating the merits of various kinds of punishment for the protection of society. The revolting feature of a particular crime generally spurs us more towards punishment of a harsher nature. How effective that is in the way of a deterrent to other similar crimes I would not know. I think you could get some figures on that, but it is difficult to say.

I am much more concerned with the approach that several others have presented here, to the effect that we are not going to protect society until we know more about the offender as a person and why he did this act, not only in order to prevent him from repeating similar acts when he gets out, but also to learn how we can prevent it.

Q. You are concerned with the punitive aspect of it?—A. I am not, no. I think we need knowledge rather than punishment.

Q. Thank you.

The WITNESS: I think that the trend is becoming evident as shown in our tendency now to begin treatment services for certain people who have been on the edge of the criminal law such as the alcoholic, the drug addict and so on.

I read in the newspapers that Mr. Martin made an important statement yesterday with respect to the treatment of drug addicts by the provinces.

The PRESIDING CHAIRMAN: Mr. Valois? Mr. Montgomery?

By Mr. Montgomery:

Q. I have one question concerning the table of statistics which was first referred to.—A. Yes.

Q. Is that table taken from the "Statistics of Criminal and Other Offences"?—A. That is right.

Q. Does that include all cases, such as those arising in the smaller courts, the police courts and so on?

The PRESIDING CHAIRMAN: Would you direct that question to Mr. Blair at this end of the table so that the reporter can hear it.

By Mr. Montgomery:

Q. Are all cases reported from the small courts all over the country? That is, I refer to small towns and magistrates courts; or are they just reported from courts of record?—A. Is that question addressed to me, or to Mr. Blair?

The PRESIDING CHAIRMAN: No, to you.

The WITNESS: In the preface to the Report the Dominion Bureau of Statistics says that "the information is drawn from reports which are supplied on the standard form by recorders of the general sessions, clerks of the county and district courts, clerks of the magistrates courts, and police magistrates courts, as well as family courts, and justices of the peace in the different judicial districts throughout Canada. There are 156 such districts; and they are enumerated by provinces."

Mr. WINCH: All courts, then?

The WITNESS: All courts, yes.

By Mr. Blair:

Q. I think it is only fair to add that the report is not perfect. It is recognized by the Bureau of Statistics that they do not get full reports.—A. I would say however, it is accurate. It is a very full and representative sample of crime across Canada.

Mr. MONTGOMERY: I would like if I may, to continue—

The PRESIDING CHAIRMAN: It seems to me that the experience we are having on this committee, and I am sure on all other committees, provides one more reason why we should have amplifiers for committees of the House of Commons. They do it in the United States, I am told, and though I have not seen the system personally, I do think it is something which should be considered. It is not, of course, the business of this committee to consider it, but we are having difficulty—one member of the committee is having difficulty in hearing what another member is asking and then the reporters are occasionally having difficulty in hearing what members of the committee are asking and I certainly think this is a matter which could be considered by, probably, the Speakers, or some other officials of both Houses—to recommend that we have some form of amplification at these committee meetings.

By Mr. Montgomery:

Q. I am sorry, Mr. Chairman, there is no reason why I should not speak loud enough to be heard. I have gathered this from the witness, and I should like to know whether I am right or wrong. Do you believe, Mr. Jaffary, that if delinquency is properly handled, we should have considerably less crime as the years go by?—A. Yes, I do.

Q. And in your opinion corporal punishment in these younger cases is not appropriate?—A. It is not permissible now under the law as I understand it. It is not a punishment in the juvenile court.

Mr. WINCH: But it is for disciplinary purposes inside a reformatory?

The WITNESS: A training school caring for children who are juvenile delinquents may use corporal punishment as an adult institution may do, but that is at the option of the department or institution concerned.

Mr. MONTGOMERY: That applies to all those who are under 16?

The WITNESS: That is right; where they are inmates of provincial training schools.

By Mrs. Shipley:

Q. Professor Jaffary, you used the term “revenge” in reference to what society was doing when corporal punishment was inflicted. Would you use the term “society’s revenge” in referring to any other type of punishment inflicted by the court? Is that “revenge” a part of society in your opinion or do you use that word solely in relation to corporal punishment?—A. No, madam. I would say that there is an element of revenge in all punitive action. Imprisonment contains, certainly, an element of revenge, but I think it is expressed very largely in throwing the offender out from society. A couple of centuries ago we used to be able to banish an offender, and as members of the committee know, there is a long history of banishment—throwing a man out of the community because he is a nuisance. We can no longer banish people into the former American colonies or to Australia, as Britain did in the past. We banish them to prison, then we think we have settled the problem. I think banishment contains some element of revenge. It also contains a large element of protection of the community and of compliance with the need to get rid of temporarily dangerous persons.

Q. The other question I have is this: you are no doubt familiar with what we were discussing the other day, namely that in Britain they have abolished corporal punishment in general, but have retained it for one purpose only, and that is for use when a prisoner attacks a prison official or the court. Are you in favour of corporal punishment for that purpose?—A. I think I would be, and I base that opinion on the realities of prisons as we have them today. I would hope that in the long run, we would be able to make much less use of imprisonment than we do at present and I think that with the increased use of probation, we shall do that. Such a trend has already started and, as you must know Mrs. Shipley, in Great Britain more persons, even those who have been charged with indictable offences are being placed on probation than are sent to institutions. Great Britain makes an extensive use of probation and I think that that has a great deal to do with the reduction of the prison population in that country. I hope that in Canada, as we introduce probation, we shall be able to reduce our prison population, and that should have an additional effect in the reduction of crime, because if you know anything about jails and prisons you know that they are crime schools of the country.

Mrs. SHIPLEY: Thank you. That is all.

By Mr. Fairey:

Q. Just to follow that up. Would you say that the physical conditions in the jails account for the greater number of cases of corporal punishment in jails as against penitentiaries, that is to say over-crowding and things of that kind?—A. Before I deal with that question I would like to go back for a moment to Mrs. Shipley's question. I do not think I answered it. I would be in favour of reserving corporal punishment for emergency situations in prisons, but only to be used with great discretion, such as in cases where there is "ganging up" on a prison guard or something of that sort. But it should only be used in under well restricted control.

Q. I am almost inclined to ask you why it would be a deterrent in cases of that kind.—A. I realize, as I started to say to Mrs. Shipley, that we do have prisons. We have people in them and we are going to have them for a considerable time. Situations arise in prisons where you do have to retain control. The superintendent of a prison may think it essential to use corporal punishment on certain people. He has to have that discretion, but I would not want it to be an unlimited discretion. I like the system which the penitentiaries have—that a decision to award corporal punishment must obtain the approval of the commissioner of penitentiaries. I think that is reasonable and wise. In what I have said I am accepting the realities of prison like where control has to be maintained.

Mrs. SHIPLEY: I was rather impressed with the idea of an independent board investigating the case in which a warden recommends corporal punishment and I think the most of us are worried lest some guards in certain jails may themselves be somewhat sadistic or unfair to prisoners at certain times and I think it must be faced that the discrepancies in the conduct of the guards may be brought to light in that way. Would you think that possible?

The WITNESS: Is the ultimate decision on corporal punishment vested in Britain with the Board of Visitors or with the Home Office?

Mrs. SHIPLEY: I understand it was a three-man independent board, apart from the prison officials, but I am not sure that I am right. However, that was the impression we got from Mr. Edmison.

Mr. BLAIR: I think they were officials of the Home Office, but I could be wrong.

The WITNESS: In other words, an outside body.

Mr. WINCH: I understand an outside board advised on it.

The PRESIDING CHAIRMAN: Would you care to comment on what Mrs. Shipley has said?

The WITNESS: I think the point was that propensity of guards or other persons to acts of a sadistic nature should be checked by higher authority.

Mrs. SHIPLEY: You think this might bring this about?

The WITNESS: I think it would.

By Mr. Fairey:

Q. It seems to me the greater number of cases of corporal punishment occurred in jails rather than in penitentiaries, and that might be due to the physical conditions, the overcrowding and the poor quarters which exist in certain jails. Do you think this is so?—A. Are you talking now about Canada.

Q. Yes.—A. I do not have the figures at my fingertips, but I would say that with regard to the provincial jails, the answer is "yes". They have probably three times as many prisoners as the penitentiaries, so you would have a larger population in the first place. I think also in terms of tendency to use corporal punishment. There has been a far greater restriction in the use of corporal punishment in the penitentiaries than in provincial institutions across the country.

By Mr. Winch:

Q. I was very much interested in the presentation made by Professor Jaffary, and I had a number of questions to ask the witness, but all except three of them have already been asked. I would ask Professor Jaffary this; is imprisonment a protection for society against the criminal, whereas corporal punishment is a punitive measure which is not in line with modern penology?—A. There are two questions there.

Q. Well, I will say, is imprisonment a protection of society, a protection against a criminal act, or the criminal, but corporal punishment is a punitive measure against the criminal who has been convicted, and is that against the modern thought of penology?

The PRESIDING CHAIRMAN: You would make a very poor lawyer Mr. Winch.

The WITNESS: I will try to unscramble this. In an earlier answer I said I thought corporal punishment contained a considerable punitive element.

By Mr. Winch:

Q. Is that in line with modern penology?—A. You will have to judge. You have the evidence before the committee.

Q. You are a student of these matters. I am asking you.—A. My evidence is that corporal punishment is not in line with the modern trend. The evidence is that Canada, together with the state of Delaware, the Union of South Africa and Egypt are the only places in the world where corporal punishment is continued as punishment assessed by the courts.

Q. That leads me into my second questions. I would like to ask this. Have you as a student of penology and especially on the question of criminal punishment, any explanation why it is that practically the only countries in the world which maintain corporal punishment are English-speaking countries?—A. No. I have not given that matter much thought. Egypt is not an English-speaking country.

Q. But all the others are, are they not?—A. Delaware is. South Africa, I would imagine uses both the English language and Afrikaans.

Q. Can you think of any other country outside Egypt which is an English-speaking country and which retains corporal punishment?—A. I do not know.

Q. And you have no explanation, psychological or otherwise, as to why it is being retained in this country?—A. No.

Q. I have only one other question, and that is based on the sentence I asked Mr. Jaffary to repeat. He said most adult offences had a background of juvenile delinquency, and he inferred that he could prove that point—I am not asking for proof, unless the witness wishes to give it. Can the professor tell us what it is that happens in the juvenile years which carries children on to come into conflict with the law and enter a life of crime? Secondly, I would ask whether corporal punishment as part of the sentence of discipline is a major factor in carrying them into a criminal career in their adult life?—A. Corporal punishment in juvenile years?

Q. In view of your statement that most adult offenders have a record of juvenile delinquency, what is the part which corporal punishment plays on the fact that they become criminals?—A. That is certainly the \$64 question. Mr. Winch is asking, I take it, what are the causes of juvenile delinquency and crime?

Q. No, I am going on your statement that most adult offences have a record of juvenile delinquency. Is there something which happens when children are charged as juvenile delinquents and put in a reform school or into a training centre which makes them carry on a life of criminality?—A. If I could answer that briefly, it would be by saying this: the causes of juvenile delinquency are not simple, as members of the committee realize. Basically, I think, they arise out of a child's insecurity in early life—insecurity in his own home, in broken homes, in foster homes and so on. And lacking that security a child does not develop a well organized personality. He has little respect for authority or even has hostility toward authority, because of the way in which he has been treated by people in authority, either by his parents or by those in charge of him at school. He acquires the same hostility to every kind of authority—to the authority of the community, and to the authority of the law, and if the pattern of his childhood is strong he tends to carry it over into adult life. Maybe this basic behaviour pattern arose from the way in which the child was treated. If he is harshly treated in a reform school, that would accentuate his attitude of hostility and predispose him towards adult delinquency. On the other hand if he were intelligently and kindly treated in the juvenile institution, perhaps for the first time in his life, it might deter him from further, adult delinquency, and in fact it does so as we know through some of our inquiries. Does that answer your point?

Q. Do I gather from that and another view of what you have said that in your estimation you feel that major attention should be given to the form of treatment and control in our juvenile institutions and that to do this would remove a great deal of criminality from adult life?—A. Yes. May I make two comments on that. I think we would be well advised to devote careful attention to our treatment of juvenile offenders, not only in our juvenile institutions, but through our juvenile courts which greatly need extending and strengthening in this country, together with the services related to probation and parole. In other words, you must get at the trouble while it is curable, and do your prevention there. Does that answer the question?

Q. No, I don't think so, sir.

By Mr. Lusby:

Q. I think you used the word "inequity" in describing the imposition of corporal punishment by one judge and another. Do you think there is an equal discrepancy in the application of corporal punishment as between one prison and another?—A. I think there is evidence from some provinces that they have abolished corporal punishment, Saskatchewan being one. You

have evidence that some other provinces, Ontario for example, still uses corporal punishment. There is inequity, obviously, between the use of corporal punishment in those circumstances.

Q. I was referring more to inequity as between prisons where they are still using it.—A. You mean, sir, inequity as between those institutions and the eight penitentiaries across Canada?

Q. Where it is still used.—A. It is still used in most of the penitentiaries. General Gibson could get that information for you. I have no figures as to the varying incidence of its use in the different penitentiaries.

Q. I was just wondering—if you thought there was a discrepancy, it would be a strong argument for abolishing it in penitentiaries.—A. I would expect to find inequities in its use in different penitentiaries, depending on the attitude of its wardens, the difficulties of administration and so on. To me that would suggest that there should be perhaps more administrative control to reduce this inequity. But I expect that General Gibson might give you some evidence on it and I think the question had better be addressed to him.

By Mr. Lusby:

Q. You are opposed, I take it, to the whole theory or doctrine. I think that some of the questioners used the word "revenge". I do not like that word; I think that "punitive justice" would be a better term. Suppose you have two men, each of whom has committed a similar crime under very similar circumstances, and each has approximately the same criminal record or lack of it. It might well be that one of those men may not require as severe a sentence for the purposes of reform as would the other. Would you say that would be a valid reason to deal with one man lightly and with the other man severely?—A. You mean in terms of length of imprisonment?

Q. Yes, or in whatever severity of imprisonment you were considering.—A. I would not and on this basis: the only real protection society is going to have against an offender, is whether on his return from prison, he is less anti-social than he was when he went in. If he returns more anti-social, then prison is not helping him. It is contributing to his delinquency and increasing the danger to the community from that man.

I would point out that this differentiation is being achieved—and hopefully will be increasingly achieved in the future—in the exercise of the parole power. At the present time under the Ticket of Leave Act, the Remissions Branch can release any person for any offence from any penal institution in Canada. That is an absolute power conferred upon it by Act. In the past it has used that power rather sparingly. I understand that there is a special departmental committee working on this question at the present time under the chairmanship of Mr. Justice Fauteux. It is making a very careful inquiry into it. I would expect that they would recommend a larger use of parole, which means in fact that these two men, with the same sentence, might in fact be released at different times, one, after only serving two years, if he is ready to come out, and if it looked as if it was in the best interest of the community that he should come out at that time and that he was ready to come out.

Another man might be detained for quite a long time and there might be no possibility of his redemption. So for the protection of the community it might be wise that he be detained for his maximum sentence. That element of distinction comes into the operation of parole.

Q. That is all.

The PRESIDING CHAIRMAN: Now, Mr. Boisvert.

By Mr. Boisvert:

Q. Do you think that the figures showing criminal offences over twenty-five years give a true picture of criminality in Canada?—A. Pardon me. Is your question as follows: "Does this table give an accurate picture?"

Q. Yes.

A. It is only a part of the picture in that these are offences which have been committed and for which the accused person was found guilty and sentenced. It does not indicate the volume of cases handled by the police or by the courts, which is a much larger number than this obviously, because you will have cases which are dismissed and so on, or cases where the offender is apprehended. And there are crimes which are known to the police but for which no arrest is ever made. There are statistics which might throw some light on that. This is a third stage of those who have been apprehended, tried and convicted.

Q. One more question. Is murder increasing in Canada at the present time?—A. That I cannot answer off hand. But I think the answer to it would be found in these statistics. We could look it up now if you wish.

Q. No.—A. I think it is in here.

Q. I am not interested.

The PRESIDING CHAIRMAN: Now Mr. Johnston.

By Mr. Johnston (Bow River):

Q. I notice in the first table of indictable offences that in 1931 the percentage was 8.6; then it goes up to 9.3 and then 9.9 and stays there pretty well until we get down to 1940. That was the period, generally speaking, of economic depression.

I notice that you stated in your remarks regarding that table, that the country had weathered this period remarkably well. That leads me to this thought: does the witness attach any importance to the fact that most of those indictable offences occurred during the depression years? Has the impact of social standards anything to do with the amount of crime?—A. That is rather a large question Mr. Chairman, and I would not wish to answer it on this much evidence.

Q. You will notice that in Table 41, if economic conditions begin to pick up the percentage drops very rapidly; in 1952 it was only 2.6.

Hon. Mr. GARSON: If I may interrupt here. As I understand the previous evidence the explanation for the drop in indictable offences as a percentage of all offences is due to a substantial increase in traffic offences. It accounts for a large percentage of the total. A much better figure would be the number per hundred thousand of population. You do not get the same falling off there.

Mr. JOHNSTON (Bow River): These non-indictable offences have to do with the traffic offences?

Hon. Mr. GARSON: This percentage is the percentage which the indictable offences are of all offences. If you use the other column the percentage goes way down, and I do not think that would be a valid statistic. Would it not be fairer to take the figure in the column of hundred thousand population in respect of the direct conclusion you are drawing?

The WITNESS: If you look at it, it bears out much the same thing as if you take the number of persons per hundred thousand of the population.

Hon. Mr. GARSON: Well, in 1935 it was 307 per 100,000 population, and now it is 288.

Mr. JOHNSTON (Bow River): Do you think, then, that social and economic conditions have an influence on the number of offences?—A. You mean an

influence on the amount of crime? I certainly do. To take one example, members of the committee will remember the depression years in Canada. There was no employment to be had, and large numbers of transients were wandering all over the country, partly in search of work, and partly because of a sort of wanderlust which gripped them because of the lack of employment, and the social disorganization which went with it. Those men were constantly hounded from place to place, as you know, by the police. The freight trains were crowded with them. One community would have enough of its own unemployed to look after, and did not want any more, and the common practice of the police was either to meet the men as they arrived at the freight yards and shoo them straight on, or to bring them before the magistrates' courts and give them so many hours to get out of town. That kind of 'crime', probably under the heading of vagrancy, certainly increased sharply because of the depression and I think statistics would bear me out. On the other hand the effect of the war had a very complicated effect upon crime. The armed forces drew off many men from civil life. For those who were not in the armed forces, for almost anybody, whether he was ordinarily employable or not, could get a job, which is a factor which would make for more stability. Opposing that factor was the cultivation of violence, by the example of commandoes and so on, which would undoubtedly create further crime. It is a very complex picture.

Q. But, in general, you would say that according to the figures you have given the economic conditions of a country do have a material effect on crime?

—A. Undoubtedly. One of the reasons, I think, for our improved crime rates since the end of the war has been the high rate of stability and prosperity, or of employment to be specific, which we have had in this country.

Q. If a person inflicts torture, that is, calculated torture on a victim, do you not think that the ends of justice would be served better by giving that person some corporal punishment rather than not. Remember it is calculated torture which he inflicts upon his victim.

The PRESIDING CHAIRMAN: An "eye for an eye".

By Mr. Johnston (Bow River):

Q. Not an "eye for an eye". It has been said that if you give corporal punishment you build up a callous attitude in that individual. Now suppose a person kidnaps somebody and then administers to his victim calculated torture. That person is just about as callous as he can be. So I do not think that you can say that if we inflict corporal punishment upon him that he would come out of prison more callous than before. Do you have any cases like that, I mean special cases where torture is inflicted by the convicted person? Do you think that corporal punishment should be given in such cases?—A. I would divide your question into two parts. One is the satisfaction of the community, if you like, in its emotional urge to do something to that "guy", or to that offender, pardon me.

The PRESIDING CHAIRMAN: "Guy" is all right!

The WITNESS: They want to do something because the crime is reprehensible; there is anger and fear and it is so strong that they want to have action. I suppose that corporal punishment might release or give some vicarious satisfaction to the community in that respect. It might. I do not know whether it does or not.

On the other hand the purpose of the criminal law is the protection of the community; and it is not clear that you are going to get any subsequent protection to the community by inflicting corporal punishment.

I would want to know more about that offender and what the likely result would be. If you are going to make him a greater danger to the community because of the corporal punishment, it seems to me it is stupid to inflict it because you are cutting off your nose in order to spite your face.

Q. You have not come to a definite conclusion in a case similar to that?—A. No, I have not. Such cases are exceptionally rare. If the behavior is so extraordinary as that, I would certainly want to have that person carefully examined because he might well be better placed in a mental hospital or some other place.

Mr. WINCH: Is it not true that you have only had two such cases of calculated torture in fifteen years in Canada?

The WITNESS: I do not know the figures, but it is very rare.

By Mr. Blair:

Q. With reference to one question which Senator Hodges asked: I think in 1953 a private member introduced a Bill in the United Kingdom for the re-imposition of corporal punishment and it was defeated after one day of debate.—A. Thank you for that correction. There was, therefore, the introduction of a private member's Bill. Thank you.

The PRESIDING CHAIRMAN: If there are no more questions, I wish to thank Professor Jaffary. The attendance which we have had at this committee today, and the attendance which we have at this moment—it is now 1:30 in the afternoon—perhaps speaks louder than my words could of the appreciation which we have for your contribution.

Mr. FAIREY: Here, here!

The PRESIDING CHAIRMAN: However, I want on behalf of this committee to thank you very much for the help you have been to us and I am sure that when our deliberations take place we will profit greatly from your contribution.

The WITNESS: Thank you, I am very glad if I have been of help.

May I call attention now to the fact that the gentleman I was speaking of, Dr. Pansegrouw, is in attendance here. This is not collaboration. He is here seeing General Gibson. However, he knows the position in South Africa and he could answer the question which was asked about the use of corporal punishment in that country.

The CHAIRMAN: First of all, would you please come forward and tell us how you spell your name?

The WITNESS: May I say, by word of introduction that he is a professor from South Africa with a very considerable experience in criminology. He is at present teaching criminology at Columbia University. He is attached to our school as a visiting professor carrying out research. He has done considerable work in connection with criminology for the social defence section of the United Nations.

The PRESIDING CHAIRMAN: We are very happy to have you here today, Dr. Pansegrouw.

Mrs. SHIPLEY: Perhaps the committee would like you to make a short statement without making any attempt to document it in any way as to the position with regard to corporal punishment in South Africa.

Hon. Mr. McDONALD: I think Mrs. Shipley means we should not keep a record of what he says.

The PRESIDING CHAIRMAN: I think you want a record made of it, do you not Mrs. Shipley?

Mrs. SHIPLEY: Oh, yes, I do.

The PRESIDING CHAIRMAN: Would you care to do that Dr. Pansegrouw?

STATEMENT BY DR. PANSEGROUW

Dr. PANSEGROUW: I am very much put on the spot, but I have no objection to saying a few words. I would, however, like to put my remarks in a more general context if I can. It seems to me that, by and large, corporal punishment is at present used more particularly in countries or territories where you have extreme social inequality as between different elements of the population. South Africa is a good example of that. This may also apply to Egypt in the sense that they have a small group of educated and propertied people as against a large uneducated and propertyless mass.

Under such circumstances corporal punishment is used as a technique for maintaining the status quo, or for keeping the people down below "in their place". In South Africa the use of corporal punishment is directly related to the race situation. Corporal punishment is not usually used in the case of white people, except in very rare instances. It should be added that corporal punishment still exists in most of the British colonies. It has been abolished during the past few years in the French colonies. Whether it is still in existence in the Portuguese and Spanish colonies I do not know, but in the British colonies it does exist, and with reference to Tanganyika it has in fact been a major point of contention in the United Nations Trusteeship Council.

It seems to me therefore that corporal punishment as it exists today generally serves the purpose of maintaining the status quo where the status quo involves a small minority of privileged persons as against a large minority of "have nots". In this respect Canada is, of course, an exception—and Delaware is an exception. At the same time Canada and Delaware are also very much out of line with the rest of the world.

The question has been asked whether some special significance is to be attached to the fact that in English-speaking parts of the world these practices have apparently persisted longer than elsewhere. I do not think I can answer this question definitively, but I can say that the main reasons for the abolition of corporal punishment in most countries of the world have been, on the one hand—and this is a negative reason—the lack of clarity as to whether it serves any useful purpose and, on the positive side, an increasing awareness of the worth of human beings and an increasing concern with respect for the dignity of the person—that is, respect for people irrespective of the social class from which they come.

I think this type of philosophy or creed has been put into legislative form perhaps more deliberately and dramatically in some of the countries on the European continent than it has in the British world. This is partly because in the British world traditions of individual freedom and respect for individual rights go much further back in history, so that these values are perhaps more firmly embodied in tradition than they are in most European countries.

Another factor that is relevant here, I think, is the fact that in the British world there has tended to be a good deal of reluctance to abolish anything by legislation while there was still a substantial body of public opinion in favour of retaining it. Sometimes this amounted to abolishing a particular practice simply by gradually not using it any longer, rather than by passing a law formally bringing it to an end. I may say that it is also perhaps because of this hostility of the English legal tradition to legislating by simple majorities against substantial opposition, that the rule of law has, by and large, been most effective in the British world. This may to some extent help to answer the question which has been raised as to why corporal punishment has continued in English-speaking parts of the world rather more persistently than in others.

The PRESIDING CHAIRMAN: In other words, we do not pass a law until people have criticized you for not passing it.

Dr. PANSEGROUW: As far as South Africa is concerned, I think that the use of corporal punishment today is very largely a political weapon. As a matter of fact, it seems to be the only "effective" weapon which a government has against passive resistance on a mass scale.

In South Africa it is serving a definite purpose—perhaps, as members of the committee might agree, a very nefarious purpose—namely, the purpose of maintaining the extreme inequality which exists in South Africa. As members of the committee know, passive resistance can be very effective as a political weapon when the authorities concerned act like gentlemen, as the British did in India. It is extremely effective because it fills the courts and the prisons, and thus paralyses the very administration of justice. It is largely to avoid this that in South Africa the authorities have made use of corporal punishment. As you possibly know, corporal punishment has been used in South Africa even for women. Women participated in the passive resistance movement, perhaps on the assumption that the authorities would not use it for women. It should be clear that this is a drastic step to take, and it can possibly be understood only if it is taken into account that it is being done by a government which is very much "in the corner" as far as world opinion is concerned and rather desperately trying to maintain a status quo.

The PRESIDING CHAIRMAN: We certainly appreciate very much, Dr. Pansegrouw, your coming here to help us in our deliberations.

Mr. WINCH: I have just one more question. Is capital punishment used in the same manner and for the same purpose as corporal punishment in South Africa?

Dr. PANSEGROUW: I would hesitate to answer that without very much qualifying my answer. My answer would be "Yes", with qualifications. Rather than go into detail I think I can illustrate why I say "Yes". For the same type of offence an African has a much better chance of being executed than a white man—something which is, of course, also true in the south of the United States. Professor Sellin has given evidence before this committee and he has probably made that point. The figures for executions in the United States are considerable disproportionate to the racial composition of offenders guilty of capital offences.

Capital punishment is used far more in the southern United States than in the northern United States. In South Africa white people are of course executed, but mostly in rather extreme cases. That is an answer to your question in an indirect way. In the sense that this is used as a technique of the powers that be, who are predominantly white, to maintain the status quo, which involves a particular place for Africans and a particular place for whites, in that sense, on a very limited scale, capital punishment is used as a political technique.

Mr. FAIREY: Is that a conscious technique on the part of the authorities or just a traditional technique?

Dr. PANSEGROUW: I think that they can hardly fail to be conscious of it.

Mr. FAIREY: It is not deliberate?

Dr. PANSEGROUW: I think it is so much part of the social system that people think about race in a particular way that this is almost automatically expressed in the administration of justice.

The PRESIDING CHAIRMAN: Thank you very much, Dr. Pansegrouw. We appreciate very much your attendance.

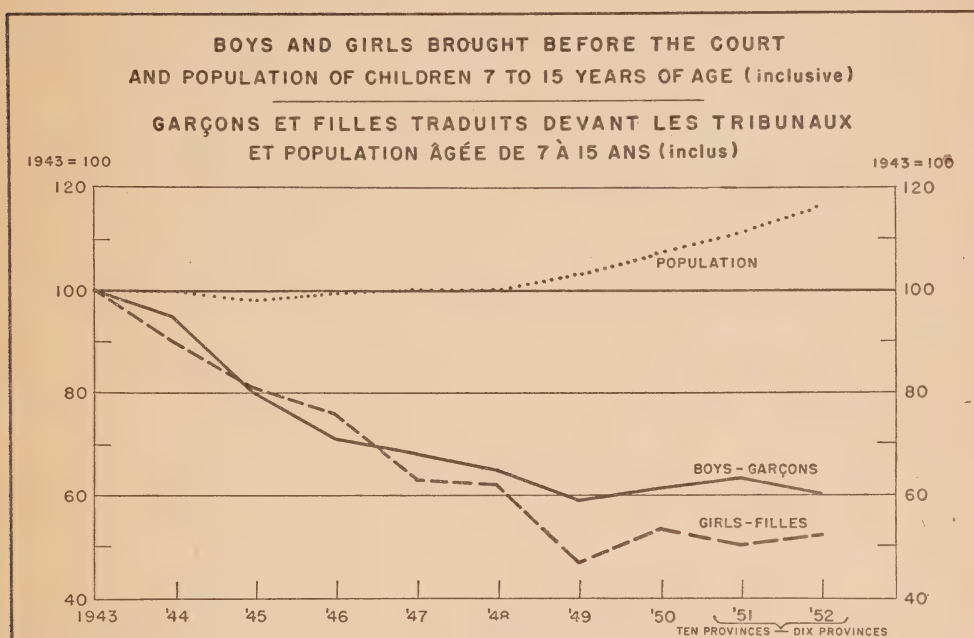
APPENDIX A
TABLE 1.—TOTAL CONVICTIONS BY PERCENTAGE AND POPULATION RATIO, 1928-1952

TABLEAU 1.—TOTAL DES CONdamnATIONS, POURCENTAGE ET PROPORTION PAR RAPPORT A LA POPULATION, 1928-1952

No.	Year — Année	Indictable Offences Actes criminels			Non-Indictable Offences Actes non criminels			Convictions of Juveniles for Major Offences Condamnations de jeunes délinquants pour délits majeurs			Convictions of Juveniles for Minor Offences Condamnations de jeunes délinquants pour délits mineurs			Total Convictions Total des condamnations			
		No.	P. Cent.	P. 100,000 Pop.	No.	P. Cent.	P. 100,000 Pop.	No.	P. Cent.	P. 100,000 Pop.	No.	P. Cent.	P. 100,000 Pop.	No.	P. Cent.	P. 100,000 Pop.	
1	1928.....	21,720	7.9	221	245,763	89.3	2,499	5,063	1.8	51	4,626	1.0	27	275,182	100	2,798	1
2	1929.....	24,097	7.5	240	290,043	90.1	2,892	5,106	1.6	51	2,720	0.8	27	321,966	100	3,210	2
3	1930.....	28,457	8.2	279	308,759	89.4	3,026	5,653	1.6	55	2,772	0.8	27	345,641	100	3,387	3
4	1931.....	31,542	8.6	304	327,778	89.3	3,159	5,311	1.4	51	2,457	0.7	24	367,088	100	3,538	4
5	1932.....	31,333	9.3	209	297,909	88.5	2,835	5,096	1.5	49	2,267	0.7	22	336,655	100	3,205	5
6	1933.....	32,942	9.9	308	292,673	87.9	2,740	5,144	1.5	48	2,309	0.7	22	333,068	100	3,118	6
7	1934.....	31,684	8.6	293	328,744	89.3	3,034	5,353	1.4	49	2,453	0.7	23	368,294	100	3,399	7
8	1935.....	33,531	8.3	307	362,642	89.8	3,316	5,514	1.3	50	2,165	0.6	20	403,852	100	3,693	8
9	1936.....	36,059	8.6	327	377,706	89.7	3,425	4,970	1.2	45	2,240	0.5	20	420,975	100	3,817	9
10	1937.....	37,148	8.0	334	420,212	90.4	3,779	5,224	1.1	47	2,492	0.5	22	465,076	100	4,182	10
11	1938.....	43,599	9.4	389	414,664	89.1	3,699	5,055	1.1	45	1,980	0.4	18	465,298	100	4,151	11
12	1939.....	48,107	9.9	425	428,608	88.5	3,788	5,018	1.0	44	2,595	0.6	23	484,328	100	4,280	12
13	1940.....	46,723	9.2	409	456,109	89.2	3,993	5,298	1.0	47	3,133	0.6	27	511,263	100	4,476	13
14	1941.....	42,636	7.1	373	547,556	91.2	4,794	6,204	1.0	54	4,106	0.7	36	600,512	100	5,257	14
15	1942.....	39,309	6.2	337	551,364	91.9	4,989	6,920	1.1	59	4,838	0.8	42	632,431	100	5,427	15
16	1943.....	41,752	8.1	353	465,315	89.9	3,939	6,494	1.3	55	3,802	0.7	32	517,363	100	4,379	16
17	1944.....	42,511	8.8	355	430,727	89.1	3,597	6,529	1.4	55	3,388	0.7	28	483,155	100	4,035	17
18	1945.....	41,965	8.3	346	455,918	90.0	3,762	5,758	1.1	48	3,151	0.6	26	506,792	100	4,182	18
19	1946.....	46,939	6.6	381	659,672	92.3	5,360	4,949	0.7	40	2,907	0.4	24	714,467	100	5,805	19
20	1947.....	44,056	5.5	350	752,458	93.6	5,980	4,683	0.6	37	2,862	0.3	23	804,059	100	6,390	20
21	1948.....	41,632	4.5	323	876,645	94.7	6,805	4,591	0.5	36	2,564	0.3	20	925,432	100	7,184	21
22	1949.....	41,661	4.0	307	980,489	95.3	7,236	4,544	0.4	34	1,654	0.2	13	1,028,348	100	7,590	22
23	1950.....	42,624	3.4	308	1,183,991	96.1	8,552	6,418*	0.5	46	—	—	—	1,233,033	100	8,906	23
24	1951.....	40,289	2.9	228	1,308,466	96.6	9,340	6,644*	0.5	47	—	—	—	1,355,399	100	9,675	24
25	1952.....	41,591	2.6	288	1,565,707	97.0	10,850	6,088*	0.4	42	—	—	—	1,613,366	100	11,180	25

* Major and Minor Offences.—* Délits majeurs et délits mineurs.

APPENDIX B



APPENDIX C

Indictable Offences by Youths 16-19 incl. (Males) 1950 & 1952

(Condensed from Tables 5 appearing in "Statistics of Criminal and Other Offences", 1950 (p. 48) and 1952 (p. 44).)

<i>Class of Offence</i>	1950	1952
I—Offences against the Person	575	456
II—Offences against Property with Violence ..	1,591	1,410
III—Offences against Property without Violence	2,785	2,576
IV—All Other Offences	713	654
	<hr/>	<hr/>
Total	5,664	5,096

APPENDIX D

REPORT OF U. K. DEPARTMENTAL COMMITTEE
ON CORPORAL PUNISHMENT (1938)

ABSTRACT OF MAIN ARGUMENTS

Membership of Committee:

The Hon. Edward Cadogan, C.B., J.P. (*Chairman*)
 Margaret, Lady Amptill, C.I., G.B.E., J.P.
 Mrs. E. A. Astley
 Professor J. L. Brierly, O.B.E., J.P.
 Mr. E. Ford Duncanson, D.S.C., J.P.
 Dr. Robert Hutchison, M.D., F.R.C.P.
 Sir William McKechnie, K.B.E., C.B.
 Mr. H. R. Tutt.
 Mr. Cecil Whiteley, D.L., K.C.
 Mrs. Muriel M. Monteith, J.P.

OFFENCES PUNISHABLE BY CORPORAL PUNISHMENT

The following are the only Acts under which the Courts are empowered to order corporal punishment for adult males:

Diplomatic Privileges Act 1708.
Knackers Act 1786.

The powers under these two Acts are now obsolete.

Vagrancy Acts 1824 and 1873

Any person convicted more than once of any of the numerous offences covered by these Acts can legally be ordered to be whipped. In recent years the power to order corporal punishment under these Acts has been used primarily in cases of a second conviction of indecent exposure. The total number of such sentences between 1903 and 1935 was 47.

The Committee stated that they were fully satisfied, from medical and other evidence, that corporal punishment is "specially unsuitable" for offences of indecent exposure.

Treason Act

Powers under this Act have never been exercised.

Vagrancy Act 1898. Importuning by Male Persons

Powers to order corporal punishment under this Act have never been exercised with any frequency and have now virtually ceased to be used.

Criminal Law Amendment Acts. Procuring and Living on Immoral Earnings

Almost all the convictions grouped under this heading are said to be for living on immoral earnings, the number of persons convicted of procuring being very small. In England 6 sentences of corporal punishment were passed under the Vagrancy Act for these offences in 1912, when the agitation in connection with the Criminal Law Amendment Bill was at its height. Since 1912 there have been 32 such sentences, of which 22 were in 1913 and 1914.

It is believed that a large proportion of those liable to corporal punishment under these Acts are medically unfit for corporal punishment. Comprehensive figures do not exist but of the cases committed for trial at the Central Criminal

Court and the County of London Sessions during 1931-1935, out of 11 persons liable to corporal punishment, 8 were medically examined in prison, of whom 6 were certified as medically unfit.

Garroters Act 1863. Garrotting committed in order to facilitate the commission of any indictable offence.

This Act is very rarely used.

Larceny Act 1916. Robbery with violence.

Most flogging sentences are passed under this Act. (See Parts II and III following).

CORPORAL PUNISHMENT OF ADULTS BY ORDER OF THE COURT

The clauses in the Criminal Justice Bill which provide for the abolition of corporal punishment of adults by order of the Courts have given rise to so much public discussion that, as the clauses are based on the recommendations of the Report of the Departmental Committee on Corporal Punishment, a brief summary of some of the more important facts contained in the Report (Cmd. 5684, 1938) would seem to be opportune.

A list of the members of this Committee is appended. They were selected as all having an open mind on the subject. None had in any way been previously connected with the movement for the abolition of corporal punishment, yet they finally reached the unanimous conclusion that corporal punishment was of no special advantage as a deterrent, and should be abolished.

I. The Deterrent Value of Flogging on the Individual

It is sometimes said that no one flogged ever risks a second flogging. That statement is not supported by the facts. According to the Report, "there are cases in which men who have been flogged have subsequently committed other offences for which corporal punishment may be ordered, and in some of these a second sentence of corporal punishment has in fact been imposed" (p. 80).

During the period 1921-30 there were 442 persons convicted of robbery with violence. Two were certified under the Mental Deficiency Acts. The after-histories of the remaining 440 were all examined.

Out of 142 who had been flogged, two were convicted again of robbery with violence and a third was charged again with a similar offence though the charge was dropped when the offender was sentenced to 10 years' penal servitude on another count founded on the same facts.

Of the 298 not flogged, three had since been reconvicted of robbery with violence, but two of these men were mentally unstable (p. 81).

With regard to subsequent offences other than robbery with violence, the record of those flogged was worse than those not flogged.

	<i>Men previously flogged. Percentage of total</i>	<i>Men not flogged.</i>
Convicted of subsequent serious crime....	55·	43·9
Convicted of subsequent serious offences of violence	10·6	5·4
Convicted of any subsequent offence of violence	13·4	12·4
	(pp. 81, 82 and 135)	

These figures cannot be explained on the ground that the men flogged were the more hardened offenders, as "even among the first offenders, the subsequent record of those flogged was less satisfactory than that of those who were not flogged" (p. 81).

II. The Deterrent Value of Flogging on Others

It is clearly difficult to prove a negative, such as the statement that the fear of flogging has no marked deterrent effect on others, but it is significant in this connection that robbery with violence has decreased more in Scotland where it is not a floggable offence than in England, where it is. For the quinquennial period 1930-1934, the number of cases of robbery with violence in England was 33 per cent. of the number in 1890-94; in Scotland it was only 6 per cent (p. 90).

Certain instances are frequently brought forward to show that flogging acts as a general deterrent, but the facts are continually misquoted.

(a) *The Garrotting Act*. It is not true that garroting was put down by this Act. The outbreak of garroting had practically ceased before the Bill was introduced. Its introduction was the result of an isolated attack on a Member of Parliament. As the Home Secretary of the day said, it was "panic legislation after the panic had subsided" (p. 83).

Robbery with violence, as distinct from the specialised form of garroting, continued unabated after the Act making it a floggable offence was passed in July, 1863. The numbers convicted "in 1865 and 1866 were even higher than those of 1862, which had led to the passing of the Act" (p. 84).

(b) *High Rip Gang (Liverpool)*. It is frequently said that the activities of the High Rip Gang were brought to an end by the sentences of flogging imposed by Mr. Justice Day at the Liverpool Assizes in the late 'eighties and early 'nineties.

Actually, in spite of these sentences, the total number of cases of robbery with violence at the Liverpool Assizes was 176 in the first three years of the period (1887-89) whereas in the last three years (1892-94)—"after a prolonged trial of flogging"—the total number was 198 (p. 84).

(c) *Robbery with Violence in Cardiff, 1908*. At the Glamorgan Assizes in March, 1908, 20 persons were convicted of robbery with violence and 14 were sentenced to corporal punishment. In spite of the large number of floggings, at the July Assizes 18 persons were charged with robbery with violence, and 16 at the November Assizes (p. 85).

It is worth noting that of the 14 flogged, two were convicted of a subsequent offence of robbery with violence, and one of assault with intent to rob, and again later of living on the earnings of prostitution (p. 85), a floggable offence. "Only two or three are believed to have lived honestly after their conviction in 1908".

III. Previous History of Persons Flogged

It is sometimes argued that the persons flogged are all so depraved and hardened in crime that no other appeal except that of physical pain can be successful. Actually many of the men flogged have no previous criminal history.

Of the 142 persons flogged for robbery with violence between 1921-1930, 40.1 per cent. had not previously been convicted of serious crime and only 16.2 per cent. had served sentences of one year or over; 15.5 per cent were under 21 years of age (p. 59). A large proportion therefore might have been regarded as still amenable to reformatory influences, but as the report states, "as a general rule the infliction of corporal punishment at the outset of a sentence of detention must tend to make the offender less amenable to reformatory influences, and thus reduce the chance that the period of detention will have a beneficial effect" (p. 58).

Conclusion

The conclusion of the committee was as follows: "After examining all the available evidence, we have been unable to find any body of facts or figures showing that the introduction of a power of flogging has produced a decrease in the number of the offences for which it may be imposed, or that the offences for which flogging may be ordered have tended to increase when little use was made of the power to order flogging or to decrease when the power was exercised more frequently" (p. 90).

CORPORAL PUNISHMENT AS APPLIED TO JUVENILES

Statistical Information

In 1920 the Board of Education published a report on juvenile delinquency. The after-records of 574 children birched in two towns were analysed. One out of every four of these children was re-charged within a month.

A comparison of their records over two years with those of juvenile delinquents not birched yielded the following results:—

	<i>Re-charged within two years</i>
Juvenile offenders birched.....	76%
“ “ put on probation	48%
“ “ fined	35%
	(p. 24)

Limited statistics are available for individual towns; for example, in one town out of 100 boys birched before 1936, 71 had been re-charged; eight had subsequently been found guilty of only minor offences, but the remaining 63 had reappeared on more serious charges.

In one Scottish town where 133 boys had been birched during 1934 and 1935, 36 per cent. had subsequently been re-charged (p. 24).

The other figures quoted deal only with very small numbers.

The Committee was of opinion that the figures were not adequate as a basis for general conclusions as they referred only to small groups, and comparable figures of the results of other methods when applied to the same type of offence were not generally available. They relied, therefore, on more general considerations, and on a consideration of the views of persons with wide practical experience (p. 25). They stated they were "not influenced by arguments based merely on an emotional objection to corporal punishment" and dissociated themselves "expressly from the extreme views commonly put forward by some of those who recommend the abolition of this form of punishment" (p. 34).

Comparison With Birching at Home or at School

The Committee made it clear that their recommendation that corporal punishment by order of the courts should be abolished was not intended to reflect upon the use of corporal punishment in the home or in the school. The circumstances, as they pointed out, are so different that "corporal punishment as a court penalty stands on an entirely different footing" for the following reasons (p. 35):—

- (a) If administered in the home or in the school it is carried out by someone for whom the boy feels affection or respect. In the school "the punishment is a part of the discipline which he accepts". As administered by the courts it is a "purely impersonal and cold-blooded infliction of physical pain". Few boys of the age birched (the average age is about 12) "can be expected to recognise even the

retributive justification of birching as an expression of society's indignation at a breach of its laws". The Committee quoted the view of Dr. Cyril Burt that the boys "might understand a sound thrashing from the victim of their offence: but a judicial birching is more likely to appear as an arbitrary and cold-blooded act of cruelty on the part of an official who has himself suffered no wrong" (p. 35).

- (b) Secondly, in the home or in the school the boy continues to be under the close supervision of the parent or master who can see if the punishment has been taken in a proper spirit, and if it has not he can take other steps to bring the boy to a proper frame of mind. After a judicial birching there is no supervision (p. 36).
- (c) Thirdly, there is the question of delay. One case is quoted when the birching was not carried out until two months after the commission of the offence, and though this is exceptional there can be no guarantee that similar delays will not occur (p. 37). At the best it cannot be a punishment occurring swiftly after the offence; there must always be a delay before the offender comes into court, and a further delay if inquiries are to be made. At home or at school the character of a boy is known and it is known, therefore, how he is likely to react to corporal punishment, and whether physically he is fitted for it. A court has not got this information in the first instance; to obtain it takes time. After this delay and "after all these inquiries corporal punishment will seem to acquire an importance out of all proportion to its deserts, and will be unlikely to produce the desired effect" (p. 38).

OTHER ARGUMENTS AGAINST BIRCHING BY ORDER OF THE COURTS

The Committee pointed out that:—

- (a) "Unless the offender is to be removed from his home, no form of treatment is likely to be effective if it is impossible to obtain the co-operation of the parents. . . . Except in those cases where the parents ask the court to order their child to be birched. . . . the court cannot, as a rule, obtain the sympathy and support of the parents in an order for birching" (p. 39).
- (b) "There is also a very real danger that a boy who has been birched may be regarded as a hero" among his companions. The normal boy does not want it to be thought by his friends that he has been intimidated by corporal punishment. "Only too often he seeks to prove this by going off at once and committing further offence. Cases have been cited. . . . in which boys who have been birched have committed a fresh offence within a few days of the birching, sometimes even on the same day; . . . there is good reason to suppose that in many of these cases the boy committed the second offence mainly in order to re-establish himself in the eyes of his companions" (p. 39).

Birching and Probation

The Committee made it clear that birching is in fact used largely as a substitute for probation. In 1935 (the last year for which figures were available at the time of the publication of the report) slightly over 50 per cent. of all juveniles guilty of indictable offences were put on probation, but in some of the towns in which birching was most extensively used only 5 per cent. were put on probation (p. 40). The figures and much of the evidence given suggested to the Committee "that in many of the areas where birching is still used probation in its proper sense has never been tried" (p. 41).

The Committee referred to the belief, sometimes expressed, that probation is equivalent to letting the offender off. This belief "shows a complete misunderstanding of the objects of probation and the results which can be obtained by a proper use of it" (p. 41). Probation is a serious matter, and if the children or the parents fail to realize this it is because the courts fail to make it clear or because probation in the particular area has not reached a high enough standard. "Too often the probation officer has so many cases under his care that it is very difficult for him to give to each that individual attention which is an essential part of successful probation work" (p. 41). What is needed is an improvement in the probation service, more qualified full-time probation officers and a wiser use of the powers to add conditions to a probation order to introduce, where advisable, a greater element of discipline (pp. 41-42). Birching cannot be a substitute for probation where training and re-education are needed. Serious offences "require constructive methods of treatment designed to deal with the causes and conditions underlying the offence, and corporal punishment is essentially non-constructive" (p. 44).

Birching and Minor Offences

With minor offences, due purely to a spirit of mischief, there is not the same need to train or re-educate the offender, and some form of sharp summary punishment would be all that is required. But whilst the Committee held that "there may be a few cases of this kind in which some form of corporal punishment would provide the element of punishment required," even so they did not think "that corporal punishment in any form in which it could be ordered by a court would be a suitable or effective remedy" for the following reasons:

- (a) delay is inevitable if adequate inquiries are to be made.
- (b) it is difficult to combine corporal punishment with any system of after-care, and the result might often be bad if the boy were not subject afterwards to any influences which could be relied upon to drive home the lesson which the punishment was intended to convey.
- (c) the effect is too often spoilt by sympathy shown to the boy afterwards by parents, neighbours and companions.
- (d) there is no effective means of controlling the severity with which it is administered. The risk is not so much that it may be administered with undue severity but that it may be administered too lightly to have any deterrent effect on the boy, or on his friends among whom he will spread the news (pp. 44-45).

For these reasons the Committee held that birching as ordered by the courts does not provide a suitable or effective punishment either for serious or minor offences, but they concluded this section of the report by expressing the view that the courts needed to have at their disposal some other form of punishment which could be applied in cases of minor offences where a prolonged period of supervision or training was not needed.*

*The provision of the Juvenile Compulsory Attendance Centres in the Criminal Justice Bill fulfils this purpose and serves therefore to strengthen the case put forward by the Committee for the abolition of corporal punishment for juvenile offenders.

N.B.: (The Committee also recommended the abolition of corporal punishment in Borstal Institutions, but its retention for certain offences against prison discipline.)

APPENDIX E

The following is an Extract (Appendix III) from the Report of the U.K. Departmental (*Cadogan*) Committee on Corporal Punishment, 1938, (Cmd. 5684) pp. 131 to 140 inclusive.

ROBBERY WITH VIOLENCE

Analysis of 440 cases of persons convicted during the period 1921-1930

1. During the 10 years 1921 to 1930, 442 persons were convicted in England and Wales of offences of robbery with violence under section 23 (1) of the Larceny Act, 1916, for which sentences of corporal punishment may be imposed. Of these, two were found on conviction to be certifiable under the Mental Deficiency Acts and were sent to Institutions for mental defectives. For the purpose of this analysis these two cases have been left out of account. Of the remaining 440 persons—

142, or 32·3 per cent., were sentenced to corporal punishment.

298, or 67·7 per cent., were not sentenced to corporal punishment.

Robbery with violence is a general term covering three statutory offences, each of which is punishable by flogging—robbery armed, robbery in company with others, and robbery with personal violence. Of these 440 persons—

263 were convicted of robbery with personal violence.

108 were convicted of robbery armed.

69 were convicted of robbery in company with others.

The following table shows the extent to which corporal punishment was ordered for each of these different types of robbery with violence:—

	<i>Robbery with personal violence</i>	<i>Robbery armed</i>	<i>Robbery in company</i>
Total number of cases.....	263	108	69
Corporal punishment ordered.....	85 or 32·3%	31 or 28·7%	26 or 37·7%
Corporal punishment not ordered.....	178 or 67·7%	77 or 71·3%	43 or 62·3%

In proportion to the numbers convicted, corporal punishment was ordered more freely for robbery in company than for the two other classes of offence. The difference is not, however, very marked and for the purposes of this analysis it is unnecessary to discriminate further between the three different types of robbery with violence. The information given in the following paragraphs is therefore related to the total number of 440 cases of robbery with violence, without sub-division into robbery armed, robbery in company, and robbery with personal violence.

Age-groups

2. Table I, in the Statistical Tables at the end of this Appendix, gives a summary of the ages of the 440 persons convicted. As might be expected, over 90 per cent. of those convicted were under 40, and over 50 per cent. were between 21 and 30 years of age. The sentences of corporal punishment were not quite evenly distributed between the various age-groups: the figures reflect a natural tendency to make greater use of corporal punishment in the case of persons in the age-groups 21-30 and 31-40. Sentences of corporal punishment were imposed on 24 per cent. of those over 40, and 27 per cent. of those under 21; but among those in the age-groups 21-30 and 31-40 the proportions sentenced to flogging were respectively 35 per cent. and 32 per cent.

Sentences of Imprisonment, etc.

3. Table II shows what sentences were imposed on the 440 persons convicted, either alone or in addition to a sentence of corporal punishment.

For this offence corporal punishment is combined almost invariably with a sentence of detention; but in this series of cases two offenders were dealt with by corporal punishment alone. These were two youths charged jointly with robbery with personal violence: they were both under 21 and had not been convicted before, and they were ordered to receive 10 strokes of the birch, without any additional sentence of imprisonment or other detention.

The figures in Table II appear to reflect a slight tendency on the part of the courts to impose longer sentences of imprisonment in cases where corporal punishment is not ordered. For the purpose of this comparison it would be reasonable to exclude the sentences of Borstal detention and the cases in which the offender was required merely to enter into recognisances. If comparison is made only of those cases in which sentences of imprisonment or penal servitude were imposed, it will be seen that in the cases where no corporal punishment was ordered 72·7 per cent. of the offenders were sentenced to penal servitude or imprisonment for 12 months or over. In the cases where corporal punishment was ordered, the corresponding percentage was 65·7 per cent.

Previous Record

4. In any attempt to assess the effects of corporal punishment by reference to the subsequent record of the person flogged, it is desirable that allowance should be made for the character and disposition of the individual. Full allowance could be made for this only in an individual study of particular cases: but, for the purpose of a purely statistical analysis, some indication of the character of the persons concerned can be obtained by an examination of their previous records.

In Table III the 440 persons covered by this review are classified by reference to their criminal record before the date of their conviction of robbery with violence. For the purpose of this classification, "persons not previously convicted of serious crime" includes, not only those with no previous convictions, but also those whose previous offences had been dealt with by fine, committal to an industrial school, birching as a juvenile, or under the Probation of Offenders Act. "Persons previously convicted of serious crime" includes all persons whose previous offences had been dealt with by sentences of imprisonment up to 12 months, or by committal to a reformatory school or Borstal Institution. The third group contains those with the worst criminal record, including one or more sentences of penal servitude or imprisonment for 12 months or over.

Of the 440 persons convicted of robbery with violence—

227, or 51·6 per cent., had not previously been convicted of serious crime.

144, or 32·7 per cent., had previously been convicted of serious crime.

69, or 15·7 per cent., had previously been sentenced to penal servitude or a long term of imprisonment.

The following statement shows the extent to which these persons were sentenced to corporal punishment on being convicted of robbery with violence.

Of the 227 who had not previously been convicted of serious crime—

57, or 25·1 per cent., were sentenced to corporal punishment.

170, or 74·9 per cent., were not sentenced to corporal punishment.

Of the 144 who had previously been convicted of serious crime—

62, or 43·1 per cent., were sentenced to corporal punishment.

82, or 56·9 per cent., were not sentenced to corporal punishment.

Of the 69 who had previously been sentenced to penal servitude or a long term of imprisonment—

23, or 33·3 per cent., were sentenced to corporal punishment.

46, or 66·7 per cent., were not sentenced to corporal punishment.

It will be noticed that over one-half of these offences of robbery with violence were committed by persons who had no previous convictions of serious crime: and in 75 per cent. of these cases the courts refrained from passing sentences of corporal punishment. In the other cases, where the offender had a more serious criminal record, corporal punishment was imposed more freely—about 40 per cent. being flogged and 60 per cent. being dealt with otherwise.

Subsequent Record

5. *General.*—The subsequent record of these 440 offenders, down to the latter part of 1937, is shown in Tables IV to VII.

The cases have been classified into four groups—(a) those who have not subsequently been convicted of any offence; (b) those who have subsequently been convicted of minor offences (i.e. offences not involving sentences of imprisonment or penal servitude); (c) those who have subsequently been convicted of major offences (i.e. offences, not including offences of violence, involving sentences of imprisonment or penal servitude); and (d) those who have subsequently been convicted of offences of violence (including, not only robbery with violence, but also such offences as wounding or assault).

Table IV gives a general picture of the record of these 440 persons subsequent to their conviction of robbery with violence. Only 23 were subsequently convicted of minor offences and, for all practical purposes, these few cases can be added to those in which the offender has had no subsequent convictions. The real distinction is between those who subsequently committed no offence or only minor offences, and those who continued to commit serious crime. Of the total number of 440 convicted, 231 (or 52·5 per cent.) have not since been convicted of any serious offence and 209 (or 47·5 per cent.) have subsequently been convicted of serious offences. It will be noticed that these figures correspond very closely with those of previous records in Table III. Of the 440 persons under review, 51·6 per cent. had no previous convictions of serious crime, and 52·5 per cent. had no serious convictions subsequently: 48·4 per cent. had previously been convicted of serious offences, and 47·5 per cent. were subsequently convicted of serious offences.

The figures given in Table IV indicate that the subsequent record of those who were sentenced to corporal punishment has been worse than that of those who were not sentenced to corporal punishment. Of those flogged, 40 per cent. have not subsequently been convicted of any offence, as against 50 per cent. of those who were not flogged. And 55 per cent. of those flogged have subsequently committed serious crime, as against 44 per cent. of those who were not flogged. It should, however, be remembered that those who were not flogged included a larger percentage of persons who had not previously been convicted and might therefore be expected to be more likely not to offend again. A comparison of Table III with Table IV shows that the percentages of those not previously convicted correspond very closely with those of persons not subsequently convicted. For this reason the figures have been further analysed in relation to previous records, and any conclusions regarding the effect of corporal punishment on subsequent careers should be based rather on the figures in Table VII, which are discussed in paragraphs 8 to 10.

6. *In relation to age.*—In Table V the subsequent record of the 440 offenders is classified in accordance with their age at the time of their conviction of robbery with violence. There is nothing of any special significance in these figures;

but the Table is of some interest as suggesting that corporal punishment may be a less effective deterrent for persons in the higher age-groups. Among those who received corporal punishment, the percentage not subsequently convicted tends to fall in the higher age-groups: whereas, among those who were not flogged, the proportion of those not subsequently convicted remains more constant throughout the various age-groups.

7. *In relation to sentences of imprisonment, etc.*—In Table VI the subsequent record of the 440 offenders is related to the sentences which they had served for their offence of robbery with violence.

The highest proportion of success is among those who received corporal punishment in lieu of any other sentence and those who were bound over in recognisances, without corporal punishment: but all of these were young men with no previous convictions, who might be expected to be more likely to refrain from further crime. Apart from these exceptional cases, the Table shows merely that the subsequent record of those not flogged was better than that of those who were flogged, whatever the period of imprisonment which they had served. Among those who had served between 6 and 12 months, 45 per cent. of those who were flogged as well were not subsequently convicted of serious crime, compared with 68·7 per cent. of those who were not flogged. Among those who had served a sentence of imprisonment of 12 months or over, the corresponding percentages were 49·2 per cent. of those flogged and 55·7 per cent. of those not flogged. Among those who had served a sentence of penal servitude, the proportion of subsequent success was 32·2 per cent. for those flogged and 44·5 per cent. for those not flogged.

8. *In relation to previous records*—In Table VII the subsequent record of the 440 offenders is analysed in relation to their previous record. Separate figures are given for each of the three groups—those who, before their conviction of robbery with violence, had not been convicted of serious crime, those who had previously been convicted of serious crime and those who had previously been sentenced to penal servitude or a long term of imprisonment. These figures show that, in two out of the three groups, the percentage of subsequent success was lower among those who had been flogged than among those who had not been flogged.

In the first group (who had no previous convictions of serious crime) 71·2 per cent. of those not flogged were not subsequently convicted of serious offences, as compared with only 66·7 per cent. of those who had been flogged.

In the second group (who had previous convictions of serious crime) 37·8 per cent. of those not flogged were not again convicted of serious offences, as compared with 29 per cent. of those who had been flogged.

In the third group (who had previously been sentenced to penal servitude or a long term of imprisonment) 32·6 per cent. of those not flogged were not subsequently convicted of serious offences, as against 34·8 per cent. of those who had been flogged.

As was pointed out in paragraph 5, any conclusions based merely on the general picture given in Table IV would have to be subject to the qualification that those not flogged included a larger percentage of persons with no previous convictions. It might be assumed that a higher percentage of subsequent convictions among those flogged was merely a reflection of the fact that in this class a higher proportion had bad previous records. The figures in Table VII, however, indicate that the higher proportion of success among those not flogged is not accounted for altogether by the fact that these included a larger proportion of persons with no previous convictions. For in the group with no previous convictions the proportion of subsequent failures is larger among those flogged than among those not flogged; and this is also the case in the group of offenders with an indifferent criminal record. It is only among the third group, with the

worst criminal record, that those flogged show a slightly better subsequent record than those not flogged. This might suggest that corporal punishment is a penalty more suited to the recidivist with a long criminal record: but of the 142 sentences of corporal punishment imposed in this series of cases only 23, or 16·2 per cent. were passed on persons of the recidivist type who had previously served a sentence of penal servitude or imprisonment for 12 months or over. 40·1 per cent. of the offenders sentenced to corporal punishment had no previous convictions, and a further 43·7 per cent. had previous convictions involving sentences of less than 12 months' imprisonment.

9. *Subsequent convictions of offences involving violence.*—Of the 142 persons sentenced to corporal punishment, 19 or 13·4 per cent. were subsequently convicted of offences involving violence, as against 37 or 12·4 per cent. of the 298 who were not sentenced to corporal punishment. Further examination of these subsequent offences of violence shows that the serious offences committed by men who had been flogged were more numerous, in proportion, than those committed by men who had not been flogged.

Of the 19 subsequent offences of violence committed by men who had been flogged, 15 were serious offences—

5 were offences of wounding, resulting in two sentences of 7 and 5 years' penal servitude, two sentences of 12 months' imprisonment, and one sentence of 3 years' Borstal detention.

3 were sentences of assault with intent to rape, or indecent assault on a female, resulting in sentences of 2 years' imprisonment.

2 were further offences of robbery with violence. Some details of these are given in paragraph 10.

1 was an offence of manslaughter, for which a sentence of 7 years' penal servitude was imposed.

1 was an offence, by a particularly dangerous criminal, of being in possession of a loaded revolver with intent to endanger life. He was sentenced to 10 years' penal servitude, and a further charge of robbery with violence was not then proceeded with.

1 was a case of demanding money with menaces, and resulted in a sentence of 4 years' penal servitude.

1 was a case of robbery.

1 was an assault on the Police, resulting in a sentence of 9 months' imprisonment.

The other 4 offences were for minor assaults, resulting in sentences of imprisonment ranging from 14 days to 2 months.

Of the 37 subsequent offences of violence committed by men who had not been flogged, 16 were serious offences—

7 were offences of wounding, resulting in sentences ranging from 3 months' imprisonment to 9 years' penal servitude.

3 were offences of robbery (not punishable by flogging) resulting in sentences of 3, 3 and 4 years' penal servitude.

3 were further offences of robbery with violence. Some details of these are given in paragraph 10.

3 were serious assaults resulting in sentences of 6, 6 and 12 months' imprisonment.

The other 21 offences were minor assaults, resulting in sentences of imprisonment ranging from 14 days to 4 months.

The figures of subsequent offences of violence by persons who had not been sentenced to corporal punishment are swollen disproportionately by this number

of comparatively minor cases of assault. It is preferable to exclude these minor assaults altogether, in order to obtain a true picture of the serious crimes of violence committed by persons who had previously been convicted of robbery with violence. It then appears that—

Of the 142 persons sentenced to corporal punishment—

15, or 10·6 per cent., were subsequently convicted of serious crimes of violence.

Of the 298 persons not sentenced to corporal punishment—

16, or 5·4 per cent., were subsequently convicted of serious crimes of violence.

10. *Subsequent convictions of robbery with violence.*—Further convictions of robbery with violence were recorded against 2 of the 142 persons sentenced to corporal punishment on the first occasion, and against 3 of the 298 persons who were not previously flogged for this offence.

The following summary gives some particulars of the 3 cases in which a further offence of robbery with violence was committed by a person not flogged on the first occasion:—

(a) First convicted of robbery with violence in 1922 and sentenced to 21 months' imprisonment. Soon after release sentenced to 3 years' penal servitude for burglary. Shortly after release again arrested for burglary and assault: asked the court to order him to be flogged rather than send him to penal servitude: but was sentenced to 5 years' penal servitude. Escaped from Parkhurst Prison and assaulted and robbed a domestic servant. While awaiting trial attempted to commit suicide. Convicted of robbery with violence and sentenced to 7 years' penal servitude. Is now serving 3 years' penal servitude and 5 years' preventive detention for housebreaking. Is regarded as mentally unstable and, although not certifiable under the Lunacy or Mental Deficiency Acts, is kept under special observation in prison because of his mental condition.

(b) First convicted of robbery with violence in 1928. Remanded to prison for special medical report. Showed signs of mental defect—reported unfit for corporal punishment. Sentenced to 17 months' imprisonment. Convicted again, in 1932 and 1933, of larceny from the person. In 1936 sentenced to 5 years' penal servitude for a second offence of robbery with violence (handbag-snatching). Though not certifiable under the Mental Deficiency Acts, he is mentally sub-normal.

(c) First convicted of robbery with violence in 1927 (handbag-snatching) and sentenced to 12 months' imprisonment. Convicted again of a similar offence in 1934 and sentenced to 15 months' imprisonment. He has no other convictions recorded against him and his record has been satisfactory, apart from these isolated outbreaks. Up to the time of his first conviction he had always been in regular work, but afterwards he had long spells of unemployment. Apparently a person of low mentality: on the occasion of his first conviction his father said in court that he had always been regarded as simple.

The following are brief particulars of the 2 cases in which a second offence of robbery with violence was committed by a man who had been sentenced to corporal punishment:—

(a) First convicted of robbery with violence in 1921—a shop hold-up in company with others—and sentenced to 6 months' imprisonment and 18 strokes of the cat. Released January, 1922, and in the following November was convicted again of robbery with violence—having attacked

and robbed a man who had offered to pay for his night's lodging. He was sentenced to 12 months' imprisonment and 20 strokes of the cat. In 1927 he was sentenced to 12 months' imprisonment for housebreaking.

(b) First convicted of robbery with violence in 1929, on 7 charges of attacking women in lonely country roads and robbing them of their handbags with personal violence. Sentenced to 12 months' imprisonment and 15 strokes of the cat. Released September, 1930. Convicted again in November, 1932, of a similar offence and sentenced to 3 years' penal servitude and 12 strokes of the cat.

TABLE I.—AGE GROUPS

Of the 440 persons convicted:—

- 81, or 18·4%, were under 21.
- 235, or 53·4%, were 21 and under 30.
- 87, or 19·8%, were 30 and under 40.
- 37, or 8·4%, were 40 and over.

The following table shows the total numbers sentenced to corporal punishment and not sentenced to corporal punishment, and the proportions in which the sentences of corporal punishment were distributed among the various age-groups.

	<i>Sentenced to corporal punishment</i>	<i>Not sentenced to corporal punishment</i>
Total numbers.....	142	298
<i>Age-group—</i>		
Under 21.....	22 or 15·5%	59 or 19·8%
21 and under 30.....	83 or 58·5%	152 or 51·0%
30 and under 40.....	28 or 19·7%	59 or 19·8%
40 and over.....	9 or 6·3%	28 or 9·4%

TABLE II.—LENGTH OF SENTENCES

The following table shows what sentences of imprisonment, penal servitude, etc., were imposed, either alone or in addition to a sentence of corporal punishment.

	<i>In addition to corporal punishment</i>	<i>Without corporal punishment</i>
Number of cases.....	142	298
<i>Sentences—</i>		
Corporal punishment alone.....	2 or 1·4%	—
Recognisances.....	—	16 or 5·3%
Imprisonment: under 6 months.....	8 or 5·6%	8 or 2·7%
Imprisonment: 6 months and under 12 months.....	40 or 28·2%	64 or 21·5%
Imprisonment: 12 months or over.....	61 or 43·0%	106 or 35·6%
Penal servitude.....	31 or 21·8%	81 or 27·2%
Borstal detention.....	—	23 or 7·7%

TABLE III.—PREVIOUS RECORD

The following table shows what type of previous convictions were recorded against those sentenced to corporal punishment and those not sentenced to corporal punishment.

	<i>Sentenced to corporal punishment</i>	<i>Not sentenced to corporal punishment</i>	<i>Total</i>
Number of cases.....	142	298	440
<i>Previous record—</i>			
Not previously convicted of serious crime..	57 or 40.1%	170 or 57.1%	227 or 51.6%
Previously convicted of serious crime.....	62 or 43.7%	82 or 27.5%	144 or 32.7%
Previously sentenced to penal servitude or imprisonment for 12 months or over.....	23 or 16.2%	46 or 15.4%	69 or 15.7%

TABLE IV.—SUBSEQUENT RECORD

The following table shows the subsequent record of the 440 persons convicted of robbery with violence, sub-divided into those who had been sentenced to corporal punishment and those who had not been sentenced to corporal punishment.

In this and the following tables all subsequent offences not involving imprisonment or penal servitude have been classified as "minor offences", and "major offences" does not include offences involving violence, which have been classified separately.

	<i>Sentenced to corporal punishment</i>	<i>Not sentenced to corporal punishment</i>	<i>Total</i>
Number of cases.....	143	298	440
<i>Subsequent convictions—</i>			
None.....	57 or 40.1%	151 or 50.7%	208 or 47.3%
Minor offences.....	7 or 4.9%	16 or 5.4%	23 or 5.2%
Major offences.....	59 or 41.6%	94 or 31.5%	153 or 34.8%
*Offences of violence.....	19 or 13.4%	37 or 12.4%	56 or 12.7%

* Among these subsequent offences of violence there are included 5 subsequent offences of robbery with violence. Of these, 3 were committed by persons who had not been flogged for the earlier offence and 2 by persons who had been flogged for the earlier offence.

TABLE V.—SUBSEQUENT RECORD

(Related to age groups)

In the following tables the subsequent record of the persons under review is related to their age at the date of their conviction of robbery with violence.

A.—SENTENCED TO CORPORAL PUNISHMENT

	<i>Under 21</i>	<i>21 and under 30</i>	<i>30 and under 40</i>	<i>40 and over</i>
Number of cases.....	22	83	28	9
<i>Subsequent convictions—</i>				
None.....	14 or 63.7%	28 or 33.7%	12 or 42.9%	3 or 33.3%
Minor offences.....	1 or 4.5%	4 or 4.8%	2 or 7.1%	—
Major offences.....	6 or 27.3%	38 or 45.8%	10 or 35.7%	5 or 55.6%
Offences of violence.....	1 or 4.5%	*13 or 15.7%	4 or 14.3%	1 or 11.1%

* Including two subsequently convicted of robbery with violence.

B.—NOT SENTENCED TO CORPORAL PUNISHMENT

	<i>Under 21</i>	<i>21 and under 30</i>	<i>30 and under 40</i>	<i>40 and over</i>
Number of cases.....	59	152	59	28
<i>Subsequent convictions—</i>				
None.....	34 or 57.6%	78 or 51.3%	28 or 47.5%	11 or 39.3%
Minor offences.....	2 or 3.4%	10 or 6.6%	3 or 5.1%	1 or 3.6%
Major offences.....	15 or 25.4%	47 or 30.9%	19 or 32.2%	13 or 46.4%
Offences of violence.....	8 or 13.6%	†17 or 11.2%	*9 or 15.2%	3 or 10.7%

* Including two subsequently convicted of robbery with violence.

† Including one subsequently convicted of robbery with violence.

TABLE VI.—SUBSEQUENT RECORD

(Related to the sentences served for robbery with violence)

In the following tables the subsequent record of the persons under review is related to the sentences of imprisonment, etc., which they had served for robbery with violence.

A.—SENTENCED TO CORPORAL PUNISHMENT

	<i>Corporal punishment alone</i>	<i>Imprison- ment under 6 months</i>	<i>Imprisonment 6 and under 12 months</i>	<i>Imprisonment 12 months or over</i>	<i>Penal servitude</i>
Number of cases	2	8	40	61	31
<i>Subsequent convictions—</i>					
None.....	1 or 50%	4 or 50 %	16 or 40%	28 or 45.9%	8 or 25.8%
Minor offences....	1 or 50%	—	2 or 5%	2 or 3.3%	2 or 6.4%
Major offences..	—	3 or 37.5%	19 or 47.5%	23 or 37.7%	14 or 45.2%
Offences of violence.....	—	1 or 12.5%	*3 or 7.5%	*8 or 13.1%	7 or 22.6%

* Including one subsequently convicted of robbery with violence.

B.—NOT SENTENCED TO CORPORAL PUNISHMENT

	<i>Recog- nitions</i>	<i>Imprison- ment under 6 months</i>	<i>Imprison- ment 6 and under 12 months</i>	<i>Imprison- ment 12 months or over</i>	<i>Penal servitude</i>	<i>Borstal detention</i>
Number of cases	16	8	64	106	81	23
<i>Subsequent convictions—</i>						
None.....	15 or 93.8%	2 or 25.0%	39 or 60.9%	52 or 49.1%	34 or 42.0%	9 or 39.1%
Minor offences..	—	1 or 12.5%	5 or 7.8%	7 or 6.6%	2 or 2.5%	1 or 4.4%
Major offences..	1 or 6.2%	4 or 50.0%	17 or 26.6%	33 or 31.1%	33 or 40.7%	6 or 26.1%
Offences of violence.....	—	1 or 12.5%	3 or 4.7%	*14 or 13.2%	12 or 14.8%	7 or 30.4%

* Including three subsequently convicted of robbery with violence.

TABLE VII.—SUBSEQUENT RECORD

(Related to previous record)

The following tables show the subsequent record of the 440 persons convicted of robbery with violence, the cases being classified according to the record of each offender prior to the conviction for robbery with violence.

A.—PERSONS SENTENCED TO CORPORAL PUNISHMENT

	<i>Not previously convicted of serious crime</i>	<i>Previously convicted of serious crime</i>	<i>Previously sentenced to penal servitude or imprisonment for 12 months or over</i>	<i>Total</i>
Number of cases.....	57	62	23	142
<i>Subsequent convictions—</i>				
None.....	35 or 61.4%	16 or 25.8%	6 or 26.1%	57
Minor offences.....	3 or 5.3%	2 or 3.2%	2 or 8.7%	7
Major offences.....	17 or 29.8%	30 or 48.4%	12 or 52.2%	59
Offences of violence.....	*2 or 3.5%	*14 or 22.6%	3 or 13.0%	19

* Including one subsequently convicted of robbery with violence.

B.—PERSONS NOT SENTENCED TO CORPORAL PUNISHMENT

	<i>Not previously convicted of serious crime</i>	<i>Previously convicted of serious crime</i>	<i>Previously sentenced to penal servitude or imprisonment for 12 months or over</i>	<i>Total</i>
Number of Cases.....	170	82	46	298
<i>Subsequent convictions—</i>				
None.....	112 or 65.9%	26 or 31.7%	13 or 28.3%	151
Minor offences.....	9 or 5.3%	5 or 6.1%	2 or 4.3%	16
Major offences.....	37 or 21.8%	32 or 39.0%	25 or 54.4%	94
Offences of violence.....	*12 or 7.0%	19 or 23.2%	†6 or 13.0%	37

* Including two subsequently convicted of robbery with violence.

† Including one subsequently convicted of robbery with violence